DOCUMENTS ON KASHMIR PROBLEM

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DOCUMENTS ON KASHMIR PROBLEM

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Discussion of the India-Pakistan Question in the Security Council Meeting

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Introduction

The history and culture of Jammu and Kashmir were part of the pan-Indian civilization. It was partly due to geography, the Himalayas and the Western and Eastern ranges separating it from rest of the world, and partly due to the Brahmanical culture, with Sanskrit as the lingua franca, which gave it a unity in the eyes of the upper strata of society. From centuries, Kashmir remained free from racism, communalism and casteism even during the communal structure of Dogra Raj. The National Movement against the feudal exploitation, led by Sheikh Abdullah, which was started in 1930 and continued upto 1947, was the result of the growth of national consciousness in Jammu and Kashmir. Various national leaders of India, including Pandit Jawaharlal Nehru and Maulana Abdul Kalam Azad recognized the democratic and nationalist spirit of this struggle. But British imperialists and the Hindu press tried to interpret and project it as a "result of the dispute between the Hindus and the Muslims". Inspites, this anti-feudal movement was participated by a broad section of peasants and artisans came out to fight in the streets. This insurgency of 1931 awakened the national aspirations of the Kashmiris, which ultimately helped in the emergence of a composite Kashmiri culture without any emphasis on Muslim sectarianism. By 1939, every conscious member of Hindu, Muslim and Sikh community joined the national movement. The anti-feudal and anti-imperialist struggle reached another high pitch in 1946. The AJKNC launched the "Quit Kashmir" movement and submitted a memorandum to the Cabinet

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Mission of 1946 demanding absolute right to freedom from the autocratic rule of the Dogra house. The movement was to counter the threat of Muslim communalism that was spread in the wake of Pakistan movement of Muslim League. It also salvaged the tradition of secular nationalism in Kashmir, Launching this struggle for a decisive victory, Sheikh Abdullah, on 15 May 1946, reiterated at Srinagar that "the demand that the princely order should quit the state is a logical extension of the policy of "Quit India". When the freedom movement demands complete withdrawal of British power, logically enough the stooges of British imperialism should also go and restore sovereignty to its real owners, the people...the rulers of Indian states have always played traitor to the cause of Indian freedom. A revolution upturned the mighty Tsars and the French Revolution made short work of the ruling class of France. The time has come to tear up the treaty of Amritsar, and quit Kashmir. Sovereignty is not the birth right of Maharaja Hari Singh, Quit Kashmir is not a question of revolt. It is a matter of right". The Sheikh was arrested on the charge of sedition against the Maharaja. Following his arrest whole valley rose in an uprising. On 19 June 1946 Pandit Jawaharlal Nehru, Aruna Asaf Ali, Dewan Chaman Lal and Tilak Raj Chadha went to Srinagar to defend Sheikh Abdullah at his trial but were arrested by the Maharaja's administration. On his return to Delhi, Nehru complained to Gandhiji and Maulana Azad, the Congress President that people in Kashmir were grooning under the reign of terror. Mahatma Gandhi visited Kashmir in August 1947 as a guest of National Conference.

The 'Quit Kashmir' movement kept the Muslim communalism in Kashmir at bay. Immediately after independence and the creation of Pakistan Jinnah decided to wrest Kashmir by force and sent raiders for this purpose. The Maharaja of Kashmir was fled. Jawaharlal Nehru decided to send troops to rescue Kashmir on the request of the Maharaja on 24 October 1947. It was done after Kashmir had legally acceeded to India. On 26 October 1947 Sheikh Abdullah also formed a peace brigade and the peoples' militia to defeat the aggression of Pakistan in the valley of Kashmir. Sheikh Abdullah, the

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doyen of nationalism, succeeded in restoring Hindu-Muslim harmony in the valley when the rest of India was burning by communal holocast. There was a good rapport between Sheikh Abdullah, Mahatma Gandhi and Pandit Jawaharlal Nehru. Congress demanded the release of Sheikh Abdullah, and the establishment of popular government in Jammu and Kashmir. National Conference favoured accession of India without instrument of accession.

The Pakistan reacted sharply and contested the validity of the accession. India took the Kashmir question to the Security Council of the United Nations on 1 January 1948 [S/628]. Pakistan made counter complaint [S/646] but admitted that some tribesmen from Pakistan might be helping the "Azad Kashmir government". After debate the Security Council passed two resolutions [S/651 and S/654] It appointed a three member Commission to investigate and mediate in the matter. On 13 August 1948 the UNCIP submitted a report to the Council in three parts [S/1100; S/1196, and S/1430]. Part first of the report contained provisons for a cease fire. Part two dealt with a truce agreement, and Part third with the holding of a plebiscite after the implementation of first two parts. India agreed but Pakistan did not. Later on both countries accepted the proposal submitted by the UNCIP to the Security Council on 5 January 1949 dealing with the plebiscite. The cease fire came into effect by 1 January 1949 and a cease fire line was agreed upon in July 1949. But a truce agreement could not be finalised due to opposite stands of both the countries.

The Security Council then appointed mediators. In 1949 General Mc Naughton of Canada was appointed as a mediator who's proposal was rejected by India. Sir Owen Dixon of Australia also could not succeed because he proposed the partition of Kashmir between both the countries rather than a plebiscite [S/1791]. Frank P. Graham of the USA was the third mediator appointed in April 1951 also met with the same fate, however, he suggested a direct negotiation between India and Pakistan. He submitted five reports S/2375, S/2448, S/2611, S/2783 and S/2967.

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In July-August 1953 and in May 1955 the Prime Ministers of both India and Pakistan started negotiated settlement which ultimately failed. After a gap of five years the Pakistan Foreign Minister F.K. Noon raised the Kashmir issue in the UN Security Council and call upon India to refrain from accepting any change in the new constitution of Kashmir—the State of Jammu and Kashmir is and shall be an integral part of the Union of India—and to accept a plebiscite [SCOR, 12th Yr., Mtg. 761]. Mr. V.K. Krishna Menon, the Indian representative informed the Council that the conditions for holding a plebiscite changed in Kashmir, [SCOR, 12th Yr. Mtgs. 762, 793 and 794]. The Security Council favoured plebiscite by adopting a resolution [S/3739] on 24 January 1957. On 21 February 1957 President Gunnar Jarring of Sweden was asked to act as mediator but India refused to accept him for the implementation of the UNCIP resolution, [S/2821].

Meanwhile, the National Conference demanded special status and autonomy for Kashmir in the political—constitutional framework of Indian political system. Article 370 of the Indian Constitution granted Kashmir a special position. It produced a hostile backlash among the Hindi-Hindu fanatics including Sardar Patel and Hindu lobby which demanded conformity of minority to Hindu majority views as well as uniformity by force. In Kashmir this Hindu lobby started non-cooperation movement against the government led by Sheikh. It was supported by the Jana Sangh, the Hindu Mahasabha, the RSS and even by the Akali Leader Master Tara Singh and Mr. S.P. Mookerjee. They criticised Nehru's appeasement policy towards Kashmir. Mr. Mookerjee called this policy as "national liability". This non-cooperation was also supported by Jayaprakash Narayan and Acharya Kripalani. This fanning of the flame of Hindu communalism—especially, in Delhi, Uttar Pradesh and Punjab—resulted in the ambivalence in Sheikh's position about accession to India. Nehru succumbed before these reactionary elements ultimately. Sheikh Abdullah now came to the conclusion "that there was no middle course between full integration and full autonomy, and as the majority in Kashmir would not accept the first alternative, there was no choice but to accept the second."

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Finally on midnight of 8-9 August 1953, the popularly elected leader of Kashmir was dismissed and imprisoned in a most undemocratic and unceremonious fashion by violating the special provisions made in the Article 370 of the Constitution.

On 2 December 1957 Security Council passed a resolution S/3922 after considering the Jarring report and directed P. Graham to make recommendations [S/3984] to the parties for facilitating a peaceful settlement and for the implementation of the resolution of the UNCIP of 13 August 1948 and 5 January 1949. The Graham report was rejected by India.

During Ayub Khan's regime Nehru-Ayub talks commenced in 1959 and 1960. On 6 October 1960 President Ayub Khan gave a threat of Military settlement of the Kashmir Problems. Threats and counter-threats continued till Chinese aggression on India in October 1962. Besides Pakistani slogan of *Jehad* President Ayub Khan put pressure on USA to exercise its influence for the settlement of the Kashmir issue. The matter was again raised in the Security Council on 1 February 1962 by Pakistan Permanent Representative Zafrullah Khan who asked the Council to take up the consideration of the dispute and to secure to the Kashmiri people their right of self-determination [SCOR; 17 Yr. Mtg. 990]. In the subsequent meetings of the Security Council [Mtgs. 1007 to 1016] Mr. Zafrullah Khan put forward his arguments in support of Pakistan's claim over Kashmir. Mr. C.S. Jha, India's permanent representative to the UN and Defence Minister Krishna Menon contested the Pakistani contentions [SCOR, Mtg. nos. 1009, 1011 and 1016] and reiterated India's claim over the state. Pakistani contention was supported by the U.S. representative and Indian position by the Soviet and Rumanian representatives. US and British representatives on 27 April 1962 tried to persuade the UN Secretary General U Thant for negotiating settlement. The issue was again raised by Mr. Plimpton, US representative, on 21 June 1962 and on 22 June 1962 when he succeeded in pursuading the Irish representative to introduce draft resolution which was vetoed out by the Soviet Union [SCOR, 17 Yr. Mtg. 1016]. Prime Minister Jawaharlal Nehru expressed deep concern over the attitude of Great Powers—the U.S.A. and the U.K. After the Chinese invasion on India both Nehru and

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Ayub agreed for negotiated settlement. Six round of Bhutto—Swaran Singh talks were held between 27 December 1962 to 16 May 1963. The talks failed on the question of distribution of areas.

The disturbances in Kashmir on the disappearance of the hair of prophet Mohammad from the Hazaratbal shrine on the night of 26-27 December 1963 gave opportunity to Pakistan to raise Kashmir question in the Security Council. Though the hair was recovered, Pakistan's Minister of External Affairs, Z.A. Bhutto sent a letter to the Security Council for an urgent meeting [S/5516] to debate on grave situation of the State. Mr. Bhutto asked for a "move towards an honourable and joint solution" of the problem in Security Council's meetings held between 7 February to 11 May 1964 (Mtgs. Nos. 1087, 1089, 1104, 1112 and 1114). Refuting the charges Mr. M.C. Chagla and Mr. B N. Chakraverti described the incident as "purely a domestic matter". (Mtg. nos. 1088, 1104, 1113 and 1115). Though Mr. Roger Seydoux, President of the Council submitted his statement on 18 May 1964 but nothing tangible came out of the debate. [SCOR, Mtg. no. 117].

The Indian government released Sheikh Abdullah on 8 April 1964 withdrawing all charges against him. He was sent to Pakistan to resolve the issue but sudden death of Nehru on 27 May 1964 dashed all hopes. Ayub-Shastri meeting on 12 October 1964 at Karachi and J.P. Narayan's visit to Pakistan brought no change in the attitude of both the countries. Meanwhile Sheikh Abdullah was again arrested on 8 May 1965 on charge of anti-India propaganda. Sino-Pak unison persuaded Pakistan to send armed infiltration into the valley from 6 August 1965. India reacted against this attack specially in the Chhamb. The war was stopped on 22 September. Tashkent Declarations, signed on 10 January 1966 restored the *status quo* in Jammu and Kashmir as it was existed before the 5 August 1965. The Pakistan Foreign Secretary Aziz Ahmed and later on 14 January 1966 President Ayub Khan declared that peace could not be achieved unless the dispute over Jammu and Kashmir was settled honourably and equitably. Bhutto also blamed

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India for creation of the problem. Talking to the British Prime Minister Harold Wilson on 23 November 1966 Pakistani President Ayub Khan said that people of Kashmir "did not like Indian rule" and added that India did not honour the commitment under the Tashkent Declaration. Not only this while speaking before the UN General Assembly meeting on 29 September 1966 Pakistan Foreign Minister, Sharifuddin Pirzada accused India for not honouring the UNCIP resolution of 13 August 1948 and 5 January 1949 about holding of a free and impartial plebiscite [GAOR, Pen. Mtg. 1423]. He also tried to raise this issue in the Commonwealth Prime Ministers' meeting held in London on 13 September 1966. He charged the Indian government with reluctance to allow the Kashmiri people to exercise the right of self-determination. Even Prime Minister Mrs. Indira Gandhi gave a statement in Lok Sabha that "India is not obliged by the Tashkent Declaration to settle the Kashmir dispute with Pakistan". Pakistan government started anti-India propaganda. Ayub Khan described Indian army as "special danger to Pakistan". He stressed on the solution of the Kashmir problem. On 10 October 1967 Pakistani Foreign Minister Mr. S. Pirzada raised a question in the UN General Assembly meeting [GAOR, Pln Mt. 1584] and demanded "self-determination" for the people of Kashmir, to which India was committed. Similar demands were made by Arshad Hussain, the new foreign minister of Pakistan in the UN General Assembly meeting [GAGR. Pl. Mtg. 1982) and Pakistan's National Affairs Minister Nawabzada Muhammad Sher Ali Khan, (GAOR Plan. Mtg. 1775) on October 2, 1969. Pakistani Home Minister Sardar Hamid accused India for avoiding discussions in the United Nations (GAOR, Pln. Mtg. 1853) on 29 September 1970. Meanwhile. Pakistani press, specially *Pakistan Times* and *Dawn* made vehement propaganda against India. "That India is suppressing freedom of the press in occupied Kashmir and adopting ruthless measures in curbing the students and youth" Kashmiris are treated as second class citizens. Pakistan supported the terrorists in Kashmir.

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A hand grenade was thrown on the Kashmir Chief Minister, G.M. Sadiq on 16 May 1966. Terrorists confessed that they were imparted training by Pakistani officers. The subversive activities of the Pakistani infilterators continued till date. The cease-fire violations took place frequently. Both India and Pakistan accused each other for violation of cease-fire agreement. In short Kashmir remained full disturbed between 1966 and 1969.

Pakistan protested strongly against India's measures to extend the application of Indian laws to Kashmir and described these contrary to the UNCIP and other resolutions of the United Nations. These bills, according to Pakistan, would give sweeping powers to the Indian Government to outlaw any organisation or any individual found guilty of questioning the India's sovereignty over any of the territories.

On 11 January 1968 Prime Minister Mrs, Indira Gandhi and Deputy Prime Minister, Morarji Desai desired to normalise relations with Pakistan by implementation of Tashkent Agreement but Pakistan did not respond favourably. Pakistan was insisting on "meaningful discussions on Kashmir". India's appeal to Pakistan for 'no-war pact' was turned down by Ayub Khan who described this proposal as "misleading" unless Kashmir dispute was solved. During the time Sheikh Abdullah and Mirza Afzal Beg were released from Jail on 3 January 1968. They demanded self determination for the Kashmiris. The hostile and anti-India attitude of Sheikh Abdullah put India in embrassing situation.

General A.M. Yahya Khan who assumed the charge from President Ayub Khan on 25 March 1969 showed his willingness for some time to establish a peaceful atmosphere between the two countries. Mrs. Indira Gandhi sent a personal letter to Mr. Khan on 22 June 1969 and suggested to revive the no-war pact proposal and a joint machinery to examine comprehensively all aspects of normalisation of relation. General Yahya Khan accepted the proposal with provision that the machinary of Indo-Pakistani body should discuss all issues including Kashmir and Farakka barrage. But after the exchange of

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letters between the two governments, no follow-up actions could be taken up by either of the governments. Instead President Yahya Khan banned all the exchange of printed materials between India and Pakistan, commercial, economic and cultural relations were completely cut off. Tashkent agreement, though Mrs. Indira Gandhi wanted to implement, went unsung and unheard. On 28 July 1970 President Yahya Khan again asked for amicable solution for Kashmir problem to establish cordial relations between both the countries.

Mr. Z.A. Bhutto advocated for quasi-military approach for the solution. Ashohar Khan recommended Algeria type struggle for Kashmir liberation. General Yahya Khan raised Kashmir's issue in UN General Assembly in October 1970 and demanded 'self determination' and withdrawal of forces of the two countries. India rejected the proposal and told that the State's accession to India in 1949 was complete. However, India favoured bilateral talks under Tashkent spirit. Mr. Z.A. Bhutto exploited the situation by raising war bogy against India. He formed Pakistan People's Party on 1 December 1967. December 1970 polls in Pakistan brought conflict between East and West Pakistan, ultimately resulted into the creation of Bangladesh. India-Pakistan relations were further deteriorated when on 30 January 1971 an Indian Airlines plane was hijacked to Lahore with Pakistani connivance and was allowed to be blown up at the Lahore airport. Hijackers were granted asylum and were given hero's welcome there. India banned all Pak flights over the Indian territory. After India-Pakistan war of 1971 both Mrs. Indira Gandhi and Mr. Z.A. Bhutto on 2 July 1972 concluded an agreement at Simla. It was promised to respect line of control resulting from the cease-fire of December 17, 1971 in Jammu and Kashmir. They also decided to settle the Kashmir issue by mutual talks. President Zia-ul-Hag, Prime Minister Benazir Bhutto, Rajiv Gandhi, V.P. Singh and Sheikh Abdullah came and went but the Kashmir remained unsolved.

Documents on Kashmir Problem is an excellent attempt of authentic and comprehensive compilation of published documents and other literature on the subject—Kashmir dispute.

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It presents the text of important documents including publications of the Government of India and Pakistan, United Nations official documents, treatments, treaties, agreements, proposals, debates—both in UN Security Council, General Assembly—and Parliamentary debates— reports and recommendations, letters, telegrammes etc. The publication would help the research scholars, academicians, educationists, politicians as well as curious laymen in understanding the issue. Compilers have made an honest attempt to be objective and impartial in compiling, editing and presenting the documents to prove their authenticity the sources of documents are also added.

We express our deep sense of indebtedness to the library staff of Indian Council of World Affairs Library, New Delhi, Nehru Memorial Museum Library, New Delhi, United Nations Information Centre, New Delhi, Jawahar Lal Nehru University Library, New Delhi, and Ministry of External Affairs Library, New Delhi for the help rendered to us during our visits there.

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151. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 763 held on 23 January 1957.*

Before I continue the observations I was making this morning, I should like to submit that the length of these observations does not arise from any particular desire on the part of my delegation to prolong these proceedings. It arises from the fact that this matter has not been before the Council for many years and, as I said this morning, there are very many new members—and the basic positions have to be understood if the Indian case is to be presented adequately. Therefore, if the Security Council desires to hear all the aspects of this matter as far they are relvant, it will be necessary for my delegation to take the necessary amount of time. But I do not want to prejudice the Security Council by creating any feeling that the length of these observations arises from any other reason.

The PRESIDENT : May I say to the representative of India, on my own behalf, that, while the Philippines is a new member of the Security Council, the representative of the Philippines has taken it upon himself to read the documents in connexion with the question at issue. The representative of India need therefore have no fear that the representative of the Philippines is not conversant with the documents in this matter.

Mr. Krishna MENON (India) : Of all the documents that have been circulated, I have read out only such relevant extracts as are necessary, leaving it to delegations, as the President has suggested, to read the documentation for themselves. But that these papers are on file does not by itself ensure that the points in them will be brought out properly.

I was dealing this morning with the resolution of the Security Council adopted on 21 April 1948 [S/726], and I pointed out that we objected to several paragraphs of it. But we were quite willing to confer and, as a result of that, the United Nations Commission started functioning.

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It is not really relevant to my purpose to go into the activities of the Commission. But it met at Geneva on 16 June 1948, and a study of the documents will reveal that at that time the Commission was concerned, and very much concerned, with one matter—and that was the matter of stopping the fighting. If the relevant paragraphs of the Commission's report were read, it would be quite clear that the conncern of the Commission was somehow or other to bring about a cease fire.

I read the following from the Commission's report :

> "At the 14th meeting, it was agreed that the question of an immediate cease-fire should be explored and that the Government of India should be asked for its observations regarding the ways and means by which such a cease-fire might be brought about". [S/1100, para. 45.]

The Commission goes on to state :

> "...that its immediate objective was to bring a cessation of hostilities rather than to deal with specific provisions contained in resolutions of the Security Council." [*Ibid.*, para. 47].

Thus, the Security Council resolutions adopted earlier in the year had been disregarded by Pakistan in the sense that it had introduced other forces and heavy fighting and been taking place in the northern areas. What I said this morning referred very largely to the offensive in Western Kashmir. While that offensive was going on, however, and despite the injunctions of and the undertakings given to the Security Council that any material changes in the situation should be reported, a considerable offensive was taking place in the Northern areas ; I shall refere to the details of this latter offensive when I deal with the Northern areas.

As a result of this heavy fighting, the Commission was naturally concerned about the immediate objective of achieving a cease-fire. The Commission met in Geneva, and finally got to Karachi on 7 July. It was at that time that there occurred the new development which has been described as a "bombshell"

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in a book written by Mr. Korbel, who was then the Chairman of the Commission. I read from the Commission's report as follows :

> "The Commission stopped in Karachi from 7 to 9 July. The principal representatives were received informally by the Minister for Foreign Affairs and Commonwealth Relations, Sir Mohammed Zafrullah Khan. He reviewed at length, and along the lines of the expositions made before the Security Council, the general background of the problem and the broader issues involved in the dispute beetween India and Pakistan. In the course of this interview"—and this is the relevant passage—"the Foreign Minister informed the members of the Commission that the Pakistan Army had at the time three brigades of regular troops in Kashmir, and that troops had been sent into the State during the first half of May. Sir Mohammed Zafrullah Khan stated that this action had been taken as a result of the spring offensive by the Indian Army." [*Ibid.*, para. 40.]

The Security Council resolution had asked for information with regard to any material change in the situation. The above-mentioned information given by Sir Mohammed Zafrullah Khan was regarded as a material change in the situation and was communicated to the Security Council. I read again from the Commission's report :

> "At the 19th meeting, on 20 July, a confidential cable was drafted and dispatched informing the Security Council of the presence of Pakistani troops in Kashmir. The Commission adopted a resolution requesting the Secretary-General of the United Nations to appoint a military adviser." [*Ibid.*, para. 53.]

It was the presence of these troops—which had been denied all along, but was admitted by the Foreign Minister of Pakistan when the Commission arrived in Karachi—that created a new state of affairs. At a latter stage, the Pakistan

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Government gave the reasons for this invasion. The report contiunes :

> "Sir Mohammed Zafrullah Khan stated that three main reasons had motivated the entry of Pakistan troops into Kashmir : protection of the territory of Pakistan from possible agression by Indian forces; prevention of a *fait accompli* in Kashmir by the Government of India; and prevention of the influx of refugees in Pakistan." [*Ibid.* para. 51].

I submit that none of these reasons have anything to do with the people of Kashmir. We have heard a great deal about their future and their destiny, but if the protection of the territory of Pakistan from Indian forces does not sound like a preventive war I do not known what it is—that is the situation were a Member State gets the right to go into a neighbouring territory for fear that it might be attacked from that State. So protection of its territory, the first reason, is not a reason that is sanctioned by the principles of the Charter.

With regard to the prevention of a *fail accompli* in Kashmir by the Government of India, so far as the legal position is concerned, whether the Pakistan Government accepted it or not, it had been put before the Security Council ; and if the view was that a *fait accompli* must not be brought about, then the Pakistan Government intended, in spite of the resolution of the Security Council, to decide this by force of arms, that is to say, to use its troops in order to prevent a *fait accompli*.

The third reason was to prevent the influx of refugee into Pakistan, and I would say that of all the reasons given this is the one that least holds water. After the partition there were seven or eight million people leaving in each direction. Refugees came from Pakistan into India and from India into Pakistan—one of those horrid scenes in our common history which I hope we shall be able to forget some day. But the idea of troops moving in to prevent the influx of refugees into Pakistan is difficult to understand. The only refugees who went into Pakistan presumably were those who preferred Pakistan as a

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home. Are we to understand that the Pakistan Goverement was going to prevent these refugees by the use of an army ?

So there are three reason given, none of which in my submission have any substance.

This other matter to which I referred just now was a matter of serious concern to the Government of India and the Commission hotes that. The Commission says—these are the Commission's findings—that Pakistan had not informed the Security Council of the presence of its troops in Kashmir because at the time they had been sent into the state the question had been entrusted to the Commission, whose daily departure was expected. This is Sir Mohammed Zafrullah Khan's explanation. The matter put before the Commission immediately after its arrival in Karachi, in the view of the Foreign Minister of Pakistan—tha is, the presence of foreign troops in Kashmir—did not raise the question of international obligations since Pakistan had never accepted any in regard to non-interference in Kashmir.

This view was repeated in Mr. Khan Noon's statement before the Security Council, that is to say that Pakistan had no international obligations in regard to non-interference in Kashmir. I submit this is a violation of the provisions of the Charter. Therefore the explanation that is given, that is, that the Commission "is coming here so we will not let it know", when the Security Council had asked six months before that these things should not be done, does not hold water. And what is more, this would have been more plausible if in the course of these six months there had been no denial. Then, to buttress this argument, the Foreign Minister went on, says the Commission, to dwell at length on economic and strategic considerations. Now if it is right to lead an army into a country for economic and strategic reasons, then I think that the causes of his negation are even more justified.

The Commission goes on to say :

"The Minister for Foreign Affairs...argued that India, if it had control over Jammu and Kashmir, would be in a

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position to divert all five rivers of the Punjab, i.e. the Chenab, Jhelum, Beas, Sutlej and Ravi, the last three being already under Indian control, and thus could reduce to a desert one-third of the irrigated areas of West Punjab." [Ibid., para. 67.]

I think the most amazing paragraph is paragraph 68 of this report which says that the Minister for Foreign Affairs pointed out.

"...that, if the Radcliffe Award had followed the terms of reference under which the Boundary Commission had operated and had included all Muslim majority areas in West Punjab, the Pakistan boundary would have been much further to the east." [*Ibid.*, para. 68].

Now what is the implication of that paragraph? The Commission pointed out that Lord Radcliffe had given an award and that award, in this particular respect, was not satisfactory to Pakistan and in many respects it was not satisfactory to us. And here the Foreign Minister is saying that if Radcliffe Award had been given the other way then of course the question of Kashmir would have been further east and the question of direct access would not have arisen. Therefore, by implication, this invasion is a method of modifying the Radcliffe Award by force.

At the time it became public knowledge—we knew all the time that it was going on—that Pakistan had invaded Kashmir, this created a great deal of feeling in India, and the Prime Minister made some reference to it in some speeches he delivered, against which Pakistan protested. And the response of the Commission is significant in this matter to show how it felt about it. At the 30th meeting on 6 August the Commission considered a telegram received from the Government of Pakistan protesting a speech delivered by the Prime Minister of India, Mr. Nehru, on 25 July in Madras and asking what measures were contemplated by the Commission. The Commission felt that in view of the presence of Pakistani troops in Kashmir, any repre-

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sentation to the Government of India regarding this speech of the Prime Minister would be ill-advised and therefore the telegram was acknowledged without comment. The Commission exchanged views concerning alternatives—this is another significant part—to a plebiscite, keeping in mind that the study of the alternatives could not be seriously undertaking without the consent of the Governments of India and Pakistan.

During these same meetings, the Government of India and the Government of Pakistan produced before the Commission the various conditions which they regarded as necessary for establishing a cease-fire. The Pakistan position, so far as I understand it, subject to correction, as set out in paragraph 50 of the report of the Commission, was that a cease-fire should come after arrangements for a political settlement—a very familiar argument in the United Nations.

The principles which the Government of India regarded as necessary for agreeing to a cease-fire, as set out in paragraph 46, 47 and later, were the following : when the Commission, under its Chairman, Mr. Graeffe, interviewed the Prime Minister, the following points were submitted on behalf of the Indian Government : (1) the regular Pakistan forces should be withdrawn from the State of Jammu and Kashmir; (2) Indian forces should remain along fixed lines and occupy certain advanced strategic positions; and (3) the evacuated territories situated outside of the fixed line should be provisionally administered by existing local authorities, or, if necessary, by local authorities to be designated by the Commission, and should be supervised by observers of the Commission, but remain under the sovereignty of the State of Jammu and Kashmir until the final settlement of the dispute between India and Pakistan.

Therefore, these principles, which were put forward ultimately and which to a very great extent found favour in the Commission, were based upon the idea of the sovereignty of the State, that is to say that it is indivisible, that its parts cannot be taken by invasion, that the Indian forces have the right and the duty of protecting this area and that the invaders must evacuate. That is the crux of the case : the invaders must evacuate the territory and, if it is necessary, there should be local

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authorities there—not governments but merely local authorities-for the maintenance of law and order under the supervisions of the Commission. That was the position, as may be seen from the resolutions that were adopted later.

As a result of those discussions, the Commission, having put to both the Government of Pakistan and the Government of India the various points of view, and in view of Pakistan's objection as set out in the report, at its meeiing on 13 August finally formulated the resolution which forms the basis of the Kashmir question so far as the Security Council is concerned. This is the well-known resolution of 13 August 1948 which brought about a cease-fire. As I stated a short while ago, the concern of the Commission at that time was to a large extent the establishment of cease-fire so that the fighting might be stopped. I shall not read out the resolution, as it is a very long one, but there are certain points of it to which I must draw attention. This resolution was referred to in the statement by the Foreign Minister at the 761st meeting, and I believe that in the interests of clarity and accuracy one ought to draw attention o it.

The representative of Pakistan stated :

"The main provisions of this international agreement for a plebiscite are :

"(1) Cease fire and demarcation of a cease-fire line."—We have no quarrel with that.

"(2) Truce agreement providing, *inter alia*, for : (*a*) withdrawal of tribesmen and Pakistan nationals the . . . (*b*) withdrawal of Pakistan troops and the bulk of the Indian Army . . . (*c*) plebiscite to be conducted . . ." [761st meeting, pra. 32].

This might appear to be of very little importance if one did not know the history of this matter, because this resolution is really conceived in three consecutive parts. The part referring to the plebiscite is not part II but part III, which has very considerable relevance to the whole approach to this problem. Part I is concerned only with a cease-fire. It places responsi-

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bility on the High Commands of the Indian and Pakistan forces "to refrain from taking any measures . . .". I shall not read out the whole resolution. It establishes the cease-fire as between the two High Commands. Part I, paragraph E, is relevant in this connexion :

> "E, The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaing an atmosphere favourable to the promotion of further negotiations."

Neither before 13 August nor after 13 August until the present time, es the Council will come to see when we deal with present conditions, has there been any appearance that this has done by the Government of Pakistan as reflected in the public opinion of Pakistan. This is not to say that the peoples of Pakistan are against the peoples of India, but there has been a campaign of hatred and a campaign of a holy war against India.

Now that the case-fire has been established, so far as the Government of India is concerned that is an agreement into which it has entered and which should be supervised by an international body of observers.

Part II relates to the truce agreement. The plan of this programme is that, first, there should be a cease-fire, than there should be a truce agreement and then comes the third part. Part II is divided into three sections; A, B and C. Paragraph 1 of section A states :

> "As the presence of troops of Pakistan in the territory of the States of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from State."

That is to say, one of the principles laid down in this resolution was that a material change in the situation had been

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brought about, and as a result of that, it was necessary as one of the first conditions of the truce that there should be withdrawal of the troops of Pakistan from the territory of Jammu and Kashmir.

Paragraph 2 states :

"The Government of Pakistan will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting."

Our submission is that there has been no withdrawal of these nationals to the extent that is required in this matter. What are called "other armies" in Kashmir are under the control of the Pakistan command. They are officered by Pakistan officers, and their administration is under Pakistan control. Therefore, to say that paragraph 2 of the truce agreement has been carried out is not accurate.

Paragraph 3 states :

"Pending a final solution, the territory evacuated by the Pakistan troops will be administered by the local authorities under the surveillance of the Commission."

This is an integral part of the conditions, and the principle for which India asked and which is incorporated by the Commission in its resolution. What is the position today ? I shall deal later with the political conditions, but there are no local authorities. The administration in that area is directly under Pakistan administration through its own officials, and the authorities in Kashmir are controlled from Karachi. So there is no such thing as local administration, much less supervision by the Commission. So that part also has not been carried out.

Now we come to some of the other more important matters. Section B, paragraph 1, begins with "When". It states :

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"When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in part II, A, 2 hereof have withdrawn, thereby terminating the situation which was represented by the Governmens of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir, and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission."

That is to say, it is only when the Commission has notified that the tribesmen and Pakistan nationals have withdrawn and, secondly, when the conditions on which we came here, namely, an invasion, has disappeared, it is at that time that the Government of India must withdraw the bulk of its forces. That is the position taken in August 1948. It was something undertaken on the basis of conditions. "Pending the acceptance of the conditions for a final settlement of the situation in the State of Jammu and Kashmir, the Indian Government will maintain, within the lines existing at the moment of the cease-fire, the minimum strength of its forces which, in agreement with the Commission, are considered necessary to assist the local authorities in the observance of law and order." (section B, para. 2)

Therefore, this part II. section B, is a recognition of the fact that the security of the State is the concern of the Government of India. That is again amplified in the phrase that follows in section B, paragraph 3 :

"The Government of India will undertake to ensure that the Government of the State of Jammu and Kashmir will take all measures within its power to make it publicly known that peace, law and order will be safeguarded ...".

It is given the responsibility for law and order and the

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responsibility for security. What is more, it was a condition that the Indian forces should withdraw only when all others had withdrawn, and the reason for bringing the case had disappered. That is set out in section B.

In the discussions that have gone on in the Security Council after this period—1952 and subsequently—these matters have been put to one side. The reason is not hard to seek, because we were confined to one problem, a problem that could be implemented only after this came into effect.

However, so far as the Government of India is concerned, in spite of this condition in section B of the resolution, we have withdrawn a considerable part of our forces. There is an army in Kashmir, and, as far as Kashmir—which is not under foreign occupation—is concerned and as far as India is concerned, that is the Indian Army. It is the Kasnmir Army. It could no more be called a foreign army than the British Army would be called a foreign army in Lancashire. It is a part of the army and the local militia that the Kashmiris are entitled to have. In spite of the fact that these foreign nationals are there, in spite of the fact that the aggression has not been liquidated, we have withdrawn a considerable part of our troops.

The Foreign Minister made some arithmetical calculations and told us that India had 80,000 troops in this area and, what is more, that constituted one-twelfth of the population. I think that if we applied these mathematics in one place it mignt be useful to apply them in some other piace. There are today forty-five battalions in those outposts around "Azad" Kashmir, and there are only half a million people there. Therefore the Security Council can work out the mathematics on that. I am not referring to other areas at the moment; I am referring to that half million people in what is called the "Azad" area, where there were, at the time when the Commission was investigating thirty-two battalions, which have now become forty-five battalions. Therefore, if we face the question of having troops, that is the position.

On this matter, I also wish to submit that Kashmir is the northern extremity of India. The Indian Army is deployed in

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the various sectors of the country, and this is one area where it has to function, not only for the protection of Kashmir and all that is involved therein, but because it is the place where it normally would be located.

If we are to take this into account, then, as I shall point point out later, we shall have to take into account the divisions of the Pakistan Army that are located about five, ten and twenty miles from our border. That is, if it is right to have the Pakistan Army in Abbottabad or in Murree or in any of these areas, then it is necessary for the Indian Army to be held somewhere. Therefore, the idea that this is an occupation, which is what has been represented to the Security Council, is a total misnomer.

Then we come to part III of the resolution of 13 August 1948, which is the crucial part. Part III states, and I would request you, Mr. President, to give your very careful attention to this :

> "The Government of India and the Government of Pakistan reaffirm their wish that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon acceptance of the truce agreement both Governments agree to enter into consultations with the Commission to determine fair and equitable conditions whereby such free expression will be assured".

The commitment about a plebiscite is usually spoken of as though it were the law of the Medes and Persians, but what does it amount to ? It amounts to an expression of a wish on the part of the two Governments. The expression of a wish is far less than what may be called an international obligation. However, I do not wish to argue that point. But take the other one, that it should be carried out upon the acceptance of the truce agreement. There has been no truce agreement signed, because Pakistan armies have not vacated and, what is more, there are continued violations.

As I shall point out later, there are large numbers of

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changed conditions under which it is no longer possible to consider the matter in these terms. So any suggestion that the Government of India—and this is the burden of the apprehension about us, and there is no further charge—has a commitment that it is not honouring. I deny totally. So far as we are concenred, the commitment is for the acceptance of a truce agreement. It is not to take a plebiscite but to enter into consultations. That is a very different thing from doing something.

First of all, there is no truce agreement. Therefore, if number two does not happen, number three is out of court. Number one the cease-fire we have performed. Number two is the truce agreement. I have given the reasons why the truce agreement is not being carried out. Therefore, number three means that it is only when number two has been accomplished that number three comes into the picture at all. The character of number three is no just a matter of taking a plebiscite, but that the Government enters into consultations. This means that the two parties shall enter into consultations in the same way, shall we say, as was arranged in connexion with elections in Indo-China. That is all there is to it. Those consultations have taken place, even without a truce agreement, and nothing has come of them.

Now the resolution of 13 August 1948 was not accepted by Pakistan. We accepted this resolution, and as I told the Security Council a while ago, we had previously set out the principles that should be embodied. While the resolution was not one that totally met our point of view, with a view to resolving the position the Government of India accepted this resolution which was adopted by the Commission on 13 August. But still there was no cease-fire. The fighting was going on in the northern areas. It was becoming more intense. The Commission reported to the Security Council and made further efforts and returned to the Indian peninsula.

It is essential in reading the document of 13 August, which is a resolution of the Commission, to appreciate that this document should be read along with the assurances given in writing by the Commission to the Government of India, because they form one document. If you like, that as a contact,

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these are the warranties. This document cannot be regarded as isolated from the context of the assurances given.

Those assurances were set out in a letter that was sent by the Prime Minister of India to the Commission on 20 August 1948. May I say here that the facts of this letter not private, as is sometimes hinted in some newspapers, between the Commission and the Phime Minister. They were published and, in the next stage of negotiations, Pakistan and India came into agreement on the resolution of 5 January 1949. Pakistan, if it agreed to that, had cognizance of these conditions.

That letter [S/1100, para, 78] says the following.

"On 17 August, my colleague, the Minister without Portfolio, and I discussed with you and your colleague of the Commission now in Delhi the resolution which you had presented to us on the 14th instant,"—that is resolution that had been previously by the Commission and presented to us.

Then, a little further on, it goes on to say :

"2. During the several conferences that we had with the Commission when it first came to Delhi, we placed before it what we considered the basic fact of the situation which had led to the conflict in Kashmir. This fact was the unwarranted aggression, at first indirect and subsequently direct, of the Pakistan Government on Indian Dominion territory in Kashmir. The Pakistan Government denied this although it was common knowledge. In recent months, very large forces of the regular Pakistan Army have further entered Indian Union territory in Kashmir and opposed the Indian Army which was sent there for the defence of the State"—which is envisaged by this resolution—. "This, we undertand now, is admitted by the Pakistan Government, and yet there has been at no time any intimation to the Government of India by the Pakistan Government of this invasion. Indeed, there has been a continual denial and the Pakistan Government

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have evaded answering repeated inquiries from the Government of India.

"In accordance with the resolution of the Security Council of the United Nations adopted on 17 January 1948, the Pakistan Government should have informed the Council immediately of any material change in the situation while the matter continued to be under the consideration of the Council. The invasion of the State by large forces of the regular Pakistan Army was a very material change"—I am sure the Council will agree—; "in the situation, and yet no information of this was given, so far as we know, to the Security Council.

"The Commission will appreciate that this conduct of the Pakistan Government is not only opposed to all moral codes as well as international law and usage, but has also created a very grave situation. It is only the earnest desire of my Government to avoid any extension of the field of conflict and to restore peace, that has led us to refrain from taking any action to meet the new situation that was created by this further intrusion of Pakistan armies into Jammu and Kashmir State. The presence of the Commission in India has naturally led us to hope that any arrangement sponsored by it would deal effectively with the present situation and prevent any recurrence of aggression."—I would like the Council to take note of that sentence, that is to say, the fact that the Commission was intervening in this matter and brought this resolution to us. They had reason at that time to think that the aggession would be terminated, but nothing of that kind happened.

"3. Since our meeting of 18 August, we have given the Commission's resolution our most earnest thought. There are many parts of it which we should have preferred to be otherwise and more in keeping with the fundamental facts of the situation, especially the flagrant aggression of the Pakistan Government on Indian Union territory. We recongnize, however, that if a successful effort is to

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be made to create satisfactory conditions for a solution of the Kashmir problem without further bloodshed, we should concentrate on certain essentials only at present and seek safeguards in regards to them."

There follow the safeguards which are very material :

"(1) That paragraph A. 3 of part II of the resolution should not be interpreted, or applied in partice, so as" (the paragraph with regard to local authorities).

"(a) To bring into question the sovereighty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops"—that is to say, that neither the invasion by Pakistan nor the fact that they evacuated it under orders from the Commission would in any way affect the sovereignty of the Jammu and Kashmir Government. That was the condition we made ;

"(b) To afford any recognition of the so-called 'Azad' Kashmir Government ; or

"(c) To enable this territory to be consolidated in any way during the period of truce to the disadvantage of the State."—That is what has happened since : the portion being administered from another place.

"(2) That from our point of view the effective insurance of the security of the State against external aggression, from which Kashmir has suffered so much during the last ten months, was of the most vital significance and no less important than the observance of internal law and order, and that, therefore, the withdrawal of Indian troops and the strength of Indian forces maintained in Kashmir should be conditioned by this overriding factor." —that is to say, we emphasized the point that we have the responsibility for security. "Thus at any time the strength of the Indian forces maintained in Kashmir should be sufficient to ensure security against any form of external agression as well as internal disorder.

"(3) That as regards part III"—that is ascertaining the will of the people—, "should it be decided to seek a

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solution of the future of the State by means of a plebiscite, Pakistan should have no part in the organization and conduct of the plebiscite or in any other matter of internal administration in the State."

Therefore, it was not as though there were two part in a pod and two people with some equal jurisdiction over this. The plebiscite was merely a concession, merely a method, whereby some peaceful settlement could be brought about. Therefore, we made the reservation that this should be done. Then the Prime Minister went on to say :

"4. If I understood you correctly, A. 3 of part II of the resolution does not envisage"—this is the Commission's position being taken—"the creation of any of the conditions to which we have objected in paragraph 3 (1) of this letter. In fact, you made it clear that the Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government."

I ask the Council to take notice of this ; that is, the Commission says that they have no authority to recognize any sovereignty other than that of the Jammu and Kashmir Government. In the face of that, how can the Security Council contemplate with equanimity the position that part of the territory has been invaded, usurped, annexed and assimilated ?

The next paragraph says the following :

"As regards paragraph 3 (2), the paramount need for security is recognized by the Commission"—that is to say, the sovereign function of defence is placed upon India—"and the time when the withdrawal of Indian forces from the State is to begin, the stages in which it is to be carried out and the strength of Indian forces to be retained in the State, are matters for settlement between the Commission and the Government of India."

That is to say, there is no mention of the words "the

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Government of Pakistan" so far as that is concerned.

The next paragraph reads as follows :

"Finally, you agreed that part III, as formulated, does not in any way recognize the right of Pakistan to have any part in a plebiscite."

Then the Prime Minister concludes :

"In view of this clarification"—these are all clarifications given by the Commission, and I shall read out the confirmation in a moment—"my Government, animated by a sincere desire to promote the cause of peace and thus to uphold the principles and the prestige of the United Nations, have decided to accept the resolution".

To complete this chapter, may I now be permitted to read the acceptance of the Commission [S/1100, para 79.]

"I have the honour to acknowlege the receipt of your communication dated 20 August 1948 regarding the terms of the resolution of the United Nations Commission for India and Pakistan which the Commission presented to you on 14 August 1948.

"The Commission requests me to convey to Your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation, it being understood that as regards point (1) (c) the local people of the evacuated territory will have freedom of legitimate political activity. In this connexion, the term "evacuated territory" refers to those territories in the State of Jammu and Kashmir which are at present under the effective control of the Pakistan High Command.

"The Commission wishes me to express to Your Excellency its sincere satisfaction that the Government of India has accepted the resolution and appreciates the spirit in which this decision has been taken."

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Therefore, here are assurances given and discussed for a very long time; clarifications sought and given; and, in categorical terms, letter signed by the Chairman of the Commission on 25 August, which completes the resolution of 13 August. Therefore, I submit that the Security Council in considering this resolution—I will come to the next one in a moment—has to read it along these clarifications and assurances. Otherwise, the Security Council has said to us that we are to accept one part of what the Commission says, and not other. Our acceptance was of this document along with those clarifications. Pakistan did not accept this.

I should also add that whatever is said here also refers to the Northern Territories—that is to say, the territories where, as I shall point out later, owing to the instrumentality of the local commanders, who are not local people at all, affiliations have been received and a considerable amount of fighting has taken place.

In regard to these Northern Territories, the Prime Minister said [1100, para. 80]:

> "The authority of the Government of Jammu and Kashmir over this region as a whole has not been challenged or disturbed, except by roving bands of hostiles, or in some places like Skardu which have been occupied by irregulars or Pakistan troops. The Commission's resolution, as you agreed in the course of our interview on the 18th, does not deal with the problem of administration or defence in this large area. We desire that, after Pakistan troops and irregulars have withdrawn from the territory, the responsibility for the administration of the evacuated areas should revert to the Government of Jammu and Kashmir and that for defence to us."

That is to say, in regard to these problem territories of Baltistan and Gilgit, and all those areas, there is a difference—difference between the local authority issue in West Kashmir, where it was suggested there were some local movements, and this one.

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The Government also said :

"(The only exception that we should be prepared to accept"—it did not accept it, but it, but it was prepared to do so—"would be Gilgit.) We must be free to maintain garrisons at selected points in this area for the dual purpose of preventing the incursion of tribesmen, who obey no authority, and to guard the main trade routes from the State into Central Asia".

India has considerable trade through these areas into the Central Asian region and the lower provinces of Asia, of Russia, of China and of Tibet.

In answer to this northern areas question, similarly, the Commission agreed. I shall read out the paragraph which relates to this agreement.

"The Commission wishes me to confirm that, due to the peculiar condition of this area, it did not specifically deal with the military aspect of the problem in its resolution of 13 August 1948. It believes, however, that the question raised in your letter could be considered in the implementation of the resolution."[S/1100. para. 81].

The Commission, therefore, tried to make a further effort, because the cease-fire could come about only if there were agreement of the two sides. It met in Geneva in September, prepared its procedure, and then reported to the Security Council in Paris. Then it proceeded to the penisula and produced a series of proposal on 11 December 1948 [S/1196, annex 3]. And those proposals of 11 December, which were passed by the Commission in its private sitting, were communicated to the Governments of India and Pakistan. India accepted them on 23 December, and I believe that Pakistan accepted them on 25 December.

So, by 25 December, we had a situation where the Commission, as passed in its private sitting on 11 December, was accepted by both Governments, and that became the resolution of 5 January 1949 [S/1196, para. 15]. In this matter

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a different procedure was followed. That is to say, the resolution was first set up by the Commission and put to the two Governments; their agreement was obtained, and it was formalized.

This is a convenient moment to point out how we stand with regard to this, because these are the two resolutions to which we have given any agreement at all—that is the resolu- of 13 August 1948 and of 5 January 1949. My submission is that so far as those resolutions are concerned they stand by their texts and by their intention. That is the first point. The second point is that they should be read together and their sequence taken into account. The third point is that these resolutions are also to be read along with, and to be conditioned by, the assurances I have read out to the Council and the other assurances that are given by the Commission with regard to the resolution of 5 January.

These assurances are printed in aid-memorie which were submitted to the Commission and which are in the official records of the Security Council S/1196, annex 4]. It was stated therein :

> "The Prime Minister emphasized firstly that, if the Government of India were to accept the Commission's plebiscite proposals, no action could be taken in regard to them until parts I and II of the Commission's resolution of 13 August had been fully implemented"—that is one of the things that is said in regard to the resolution of 5 January—; "secondly that, in the event of Pakistan not accepting these proposals or, having accepted them, of not implementing parts I and II of the reolution of 13 August, the Indian Government's acceptance of them should not be regarded as in any way binding upon them"—I shall come back to this in a moment—; "and thirdly, that part III of the Commission's resolution of 13 August provided 'that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will the people and to that end, upon acceptance of the truce agreement, both Governments agree to enter

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into consultation with the Commission to determine fair and equitable conditions whereby such free expression will be assured'.

"...While the Government of India adhered to their position in regard to plebiscite, they had pointed out that, in view of the difficulties of holding a plebiscite in present conditions in Kashmir, other methods of ascertaining the wish of the people should also be explored. The Commission had itself recognized the difficulties of carrying out a plebiscite in Kashmir. The Government of India feel that the exploration of other methods should not be ruled out."

For the present purposes I am satified to put in these aide-memoire for the information of the Security Council. If, in further debate, there should be any challenge upon them, then I would have to argue what is in those aide-memoire. But the main thing is this : "secondly that, in the event of Pakistan not accepting these proposals or, having accepted them, of not implementing parts I and II of the resolution of 13 August ..."—and our submission is that parts I and II of the resolution are not implemented, and that therefore the Government of India cannot be regarded as being bound by those resolutions, because that is the consecutive character. It is a concerted resolution. Unless A is accomplished, B cannot be undertaken ; unless B is accomplished, C cannot be undertaken. Apart from what C means—something to which I have referred—, B has not been implemented, and so unless there is a truce, unless there is evacuation, how does the Security Council even contemplate the idea of anything in the nature of an assessment of the will of the people in the occupied areas of Pakistan, with forty-five battalions of these forces, the entire army of Pakistan, right up on our frontiers ? And when I deal with the military preparations in that area, the Security Council I hope, will begin to sit up and take notice. That has nothing to do with the welfare of those people. The people in the Azad areas, the people in Gilgit, the people in Chitral and the people in Baltistan—they do not go around in aeroplanes, and the

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Council will be bound to enquire what is the purpose of these airfields and airstrips in these areas.

I think it would be regarded as unfair to the Council if I did not refer to the fact that the resolution of 5 January 1949 deals, in the main, with the implementation of part III of the resolution of 13 August 1948, which deals with the cease-fire and the truce and leaves the plebiscite in one paragraph. What the resolution of the 5 January does is to elaborate the ways in which a plebiscite should be taken. Practically the whole of this resolution deals with the methodology of this plebiscite, but it is not as though it is laid down categorically. These so many "ifs" and "whens" in this which are integral to the commitments made by India. The Council will bear with me if, on behalf of the Government of India, I try to clarify this matter, because it is a serious thing to tell a Government that it is not honouring its commitments ; and it can only honour the commitments which it has undertaken. A commitment does not become a commitment by assumption of what has gone before.

Now, what is this resolution of 5 January 1949 ? It reads as follows :

"*The United Nations Commission for India and Pakistan,*

"*Having received* from the Governments of India and Pakistan, in communications dated 23 December and 25 December 1948, respectively, their acceptance of the following principles which are supplementary to the Commission's resolution of 13 August 1949 :

"1. The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite."

As everybody will notice, it says "will be decided"– a simple futurity. It does not say "shall be decided."

Paragraph 2 of this resolution governs paragraph

"2. A plebiscite will be held when it shall be found by

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the Commission that the cease-fire and truce arrangements set forth in parts I and II of the Commission's resolution of 13 August 1948 have been carried out and arrangements for the plebiscite have been completed."

That "when" still remains "when". And I shall submit later on that "when" not only remains so, but it is no longer possible.

Paragraph 3 of the resolution deals with the functions of the Plebiscite Administrator. I must say a word about the Plebiscite Administrator. Our position in this matter was that we did not like it, but that there was really no objection to man working out the details if he wanted to, so that he could put them into operation when the time came. We had no feeling about people coming into the country or seeing things for themselves and so, when it was pressed upon us, we agreed to Plebiscite Adminstrator being appointed subject to all this expert advice.

Now we come to paragraph 4 :

"4. (a) After implementation"—and I ask the Council to take note of these words—, "of parts I and II"—the previous paragraph said "when"—, "of then Commission's resolution 13 August 1948, and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation with the Government of India"—not with the Government of Pakistan, "the final disposal of the Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite."

There is one verbal implementation which I should like to make. It has always been understood that this expression "disposal", used in this resolution, means, to the Government of India, "disposition". The Council will see that is its meaning if it looks at the world "disposition" used in other places.

So paragraph 4, again, reiterates this fact, that nothing

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can happen until parts I and II of the resolution of 13 August 1948 have been carried out. Part I has been signed, although there have been serious breaches of the cease-fire—one of them of a serious character which developed into a miniature battle.

Hence, the whole of the resolution of 5 January is concerned with the minutiae of the plebiscite, but even in that, it makes it quite clear at what time it will occur. This is a plan of action. It is a blueprint. But you cannot operate it, you cannot pull the trigger on it until parts I and II are in operation. Part I is in operation; therefore, there is no fighting—and, so far as we are concerned, it will remain in operation. But part II is not in operation; and, what is more, the conditions that could have enabled part II to be in operation have been breached before this, without the knowledge of the Security Council and without conveying the information, and afterwards, and is being breached continually. In fact, a division of Kashmir, which is wrong both *de jure* and *de facto*, has taken place. This is a sheer violation of all the commitments made by the Government of Pakistan to the United Nations. That is the limit of our commitments in this matter.

That finishes the first part of my submission to the Security Council; that is, it takes us to what our commitments are. So far as I can remember, three or four resolutions were adopted by the Security Council before 13 August 1948 and 5 January 1949. I think that we should consider those two resolutions as one plan. The Security Council will appreciate, when it has gone through the papers and pondered, that all the previous resolutions are absorbed by these; the resolutions of 13 August and 5 January really take into account all the previous resolutions. It is the submission of my Government that all the resolutions which may follow can only flow from these. Therefore, the binding conditions, whether they bind us or whether they are conditional bindings, or provide for denunciation and escape, all have to be taken into account. The only things that bind us in regard to Kashmir, so far as the Security Council and the world are concerned, are these resolutions with all the conditions I have mentioned. And I would say that, while we are not a member of the Security Council, as a

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Member State which has earnestly tried to discharge its solemn obligations to the international community, the Council will think many times before it is led even to think, lot alone express a view, that the Government of India has in some way tried to get round international commitments.

I shall try, in the course of my next submission, to deal with the matter of what a commitment is, what a decision is, and what a recommendation is.

One gathers the impression that there is some desire to know about the Constituent Assembly since, in our view erroneously, the Security Council seems to persist in the idea that this is some world-shaking matter. I must confess that the atmosphere of crists has been created, or some sort of D-Day or zero hour, for 26 January. But whatever may be the background which we are able to understand, we have the duty to point out what the facts are, and I have therefore decided to change the arrangement of my presentation. Logically, this should come much later, but in order to suit the convenience of the Council, and because, I want to tell you, I am not in a fit condition to sit through a third session continuously, I have changed the order of my presentation. Therefore, I propose now to take up first of all the claim—and by claim I mean the title or the argument, or the ease, or whatever it may be—that Pakistan may have for Kashmir. Secondly, I shall deal with the accession, and then with the Constituent Assembly, because if I do not deal with the accession, the Constituent Assembly becomes unintelligible. I shall be able to do all that this afternoon. I think it is very necessary that this political, social—if you like, logical—aspect of this question should be understood.

From what we have heard in the Security Council, from all the discussions, the debates, the writings and everything else that goes on in Pakistan and which have been communicated in the views expressed by the foreign Press, there is some idea that over and above the Security Council decisions there is a basis for the affiliation of Kashmir to Pakistan, that there is some natural affinity.

What are these considerations ? We accept some of these

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considerations, but we argue that they are either equally or more applicable to us. For the moment, I am putting to one side whatever title we may have derived. I am talking of the extra-legal considerations and the extra-security considerations.

The first of these is geographical contiguity, which is commonly accepted by all of us. The answer to that is that Kashmir has a frontier with Pakistan on the west and slightly to the north-west. It has a frontier with India and communications with India. It has a frontier with Russia in Sinkiang and China and Tibet. Therefore, Kashmir has a large number of frontiers.

Geographical contiguity is very often governed to a considerable extent by the historical past, and Kashmir's economic relations and commercial relations have been very much more with India than with Pakistan. This did not arise in the old days, because it was one country. Therefore, if it is a question of a common frontier and of contiguity, it is not as though the accession of Kashmir to India is the accession of the some far off island which is separated from the rest of our territory. To put it at its worst, contiguity is a commion factor.

The other matter is on one which my Government will not in any circumstances alter its position. We refuse to recognize what is called the "two-nation theory". India is a secular State, where any person, Hindu, Muslim, Christian. Buddhist, or whatever he is, is equal son or daughter of India, with rights of citizenship guaranteed by our Constitution. India claims Islam as one of the Indian religions, just as it does Christianity or any other. Therefore, we refuse to accept the thesis that because the population of a particular area is of one religion, some political issue is involved. We are not a theocracy ; we are a modern, secular State governed on democratic principles, where the right of citizenship is based on residence, upon domicile, and upon loyalty to the Constitution. Therefore, we totally disregard this argument with regard to Muslim majorities and Hindu minorities, and everything else.

Some of you may say that is a very nice view, but it is not how the world is run. Then how do we look at it ?

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Pakistan has a population—I am subject to correction—of between 70 and 80 million, because I believe that their census, like ours, was taken in 1951, and our populations increase by 1.5 per cent a year. Roughly speaking, Pakistan has a population of somewhere about 75 million; but the proximity of Kashmir is to West Pakistan (Pakistan is in two parts and is separated by the Indian mainland extending for about 1,000 miles). Therefore the proximity of Kashmir, ethincally and otherwise, is to West Pakistan, and I have no accurate figures of the Muslim population of West Pakistan. However, at the very outside, it cannot be more than about 30 million, and there are nearly 50 million Muslims in India. If our Government were to accept the view that because people are Muslims, thay shold belong to another State, I ask the Security Council, in all conscience, to consider what would happen to the considerable Muslim minorities in my country. They are distributed over the whole of our land. In some places they are sparse minorities, in some places they almost the majority in the area. Are we to say that they are second-class citizens ? We refuse to accept that position in India. We have almost as many Muslims in India—and I qualify the word "almost" as in the whole of Pakistan. We do not regard it as either a foreign culture or a foreign religion. What is more, whether it be in Pakistan or in India, whether they be Hindus, Muslims, Christians, or whatever they are, their ancestries are pretty much the same. One religion does not mean one race, nor does it mean that there is a separation between two religious groups.

We have this considerable Muslim population inside India, but it is not regarded as a minority. There is no question of the Muslims having any special sheltered treatment ; they would not have it. They are equal citizens in our country, taking their place in our Government, in our public services, in our industry, in our agriculture, and in everything else, just like everybody else. The secular State is one those ideas and one of those possessions which we regard with great jealousy, because in this world the rivalry of religion and the amount of violence that has been carried out in the name of religious loyalty has been to an extent that should shame humanity at

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any time. Therefore, we are not prepared at any time to accept any view, whatever resolutions anybody may pass, that there is any justice or anything that a modern community can entertain in this idea of what was spoken of in the address of the Foreign Minister of Pakistan, who attributed it to Lord Mountbatten, about what is called communal repesentation or communal affinity, or something of that kind. [761st meeting, para. 13.]

The whole connexion of Kashmir if, as I said a while ago, with the mainland. Its capital was founded in the third century B.C. I am not an antiquarian, I have not studied it, but the history of Kashmir is a continuous one. It has been ruled by Hindu kings, by Muslim kings, by Sikh kings by Afghans, and by all kinds of people, but it has always been part of the mainland of India.

Therefore, those are extra-constitutional, extralegal, extra-United Nations considerations, by which I mean they are considerations which are outside the principles of the Charter, on the one hand and which do not come into any of the resolutions or any of the decisions which we have made. However, it was necessary for me to put them forward because it was on them that the other argument was based : that the accession was wrong, that we got it by force or by fraud.

What, then, is the interest ? Sir Mohammed Zafrullah Khan said that there are strategic interests. Well, I would argue first of all that the strategic intersts of a country should not always be placed in the picture when we are talking about the fortunes of the people of that country. But let us leave that alone. What if there are strategic interests ? The strategic interests of a country like India, with its big land mass in the Indian Ocean, is at least as vital in the world as the strategic interests of its neighbour, and we are not aware of any strategic interests in our mind which are inimical to the strategic interests of Pakistan. Therefore, this strategic interest, which was advanced by the former Minister, in our opinion, is one that should not appeal to the Security Council.

What is the actual position with regard to this evaluation?

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I outlined briefly this morning the relation of Kashmir to India, that is, that when the British left India these States were to accede to one country or to the other, to one Dominion or to the other. That was the position. That way was prescribed in the Constitution, and it would be of interest to know that the way of accession was not thought out after the partition. It is contained in the Act of 1935 passed by the British Parliament. The way of accession is for the Head of the State to submit an instrument of accession and for the Government of India to accept it or the Government of Pakistan to accept it. So an offer of accession and an acceptance completes accession. That creates a union within a federation.

On 26 October 1947 the Maharaja of Kashmir who was the Head of the State—I am now dealing with the constitutional necessities—submitted to the Governor-General of India an instrument of accession—in the Constitution of that day the Governor-General of India was the Head of the Government, but not today ; he was the representative of the British Crown because at that time we were an independent British dominion. The text of this instrument is set out in annex IV of my statement [S/PV. 762/Add. 1, annex IV, document 5]. I will not read it because it is a legal document in conformity with what is said in the Constitution. I will read it if it is challenged, but otherwise I will not do so. It is set out in the Constitution, in the Act of 1935, as amended. That instrument was sent over on 26 October and on the 27th, Lord Mountbatten, Governor-General of India, accepted the accession. Lord Mountbatten said : "I do hereby accept this instrument of Accession." the accession is complete. We should look at these caveats more frequently than we have done. It has been suggested time and again that there is something like provisional accession, that you can go in and come out.

This is a very serious matter for us, a serious matter not only for India but for every country seated around this table. We are a federation ; we are not a confederation, and the units that accede to federation stay in once they have acceded. There is no provision in our Constitution, there is no contemplation in our Constitution for the secession, and that is

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not peculiar to us. Our institutions are largely derived from Anglo-Saxon parliamentary institutions which affected the constitutions of the countries of Western Europe and North America. In these countries there is no provision for secession at all. That is to say, under the Government of India Act, as in force on 15 August 1947—the relevant extracts of which are in annex IV [S/PV. 762/Add. 1, annex IV, document 3]—it has been set out how a State should accede. Once that accession has taken place there is no provision in this to go out. The only provision there is, is in regard to variation. A ruler may, by a supplementary instrument executed by him, and accepted by the Governor-General, vary the instrument of accesssion of his State by extending the functions which, by virtue of that instrument, are exercisable by any dominion authority in relation to the State. But, of course, the Government of India also has to agree. If the two sides agree, it is possible to vary the conditions of the relationship between the constituent unit in the federation and the central Government. That is all that is permitted by the law. Therefore, when anyone suggests to us that there should be a divorcement of this territory from our federation, we are being asked to act against our constitutional procedures. Now I freely admit that when the municipal constitutional procedures, as your learned colleague will advise you, are against well-known principles of international law—international law prevails. But in this particular matter the Constitution of India is presumed to be known to the United Nations when it was admitted as a Member. These provisions were there even before we were independent. Also, it is well known to international law that in a federation of our kind there is not right of secession.

I want here to refer only to two instances. One is the well known instance of the United States and it is possible to quote case after case to show where the constitutent States of the United States have a greater degree of sovereignty than the units of our federation—one can say this without going into domestic affairs—because they have residuary powers in those States. But it has gone to the Supreme Court of the United States time after time.

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I think the leading case in this matter is a case called Texes v. White, were the Supreme Court ruled once and for all that there was no such right vested in a State. The issue was not whether they wanted to secede, but that was the point that had to be decided. For our purposes it is much better to go into the general principle of secession. If you want me to, I can quote it. But any textbook on this subject will tell you that in a federation there is no right of secession. Our Constitution in this sense is different from the constitutions of some other countries. In Texas v. White, the Supreme Court settled the constitutional question. The book *Studies in Federalism*, edited by Bowie and Friedrich states that "the Supreme Court settled the constitutional question of the right of secession, as it had in fact been settled by the Civil War." I did not want to refer to that because the Civil War was not exactly judicial process. But, at any rate, it certainly showed the determination of a people to retain the unity of their country and which side really asserted itself.

But in this case the Supreme Court said :

"When, therefore, Texas became one of the United States, she entered into an indissoluble relation."

That is a provision of a constituent unit in the federation. In other words, a federation does not recognize divorce. Once it is in, it is a sacrament ; it cannot be sparated ; it is an indissoluble relation.

The Supreme Court continued :

"All the obligations of perpetual union and all the

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guarantees of republican government in the Union, attached at once to the State."

That is to say, Texas by the fact of its admission, became an American State. It is not only Texas, but it is America, the United States of America.

The Supreme Court continues :

"The act which consummated her admission into Union was something more than a compact."

A State, in my submission, can no more banish itsef from a federation than an individual can banish himsef from a State. He has no right of divorcement from the community to which he belongs. There may be rules of exile in a country, but there is no way in which a man can disqualify himself except by committing a crime. The act which consummated the admission of Texas into the Union was something more than a compact ; it was not a contract and therefore could not be dissolved.

The Supreme Court continued :

"...it was the incorporation of a new member into the political body. And it was complete and final...There was no place for reconsideration or revocation, except through revolution or consent of the States".

It is possible for the Parliament of India, in the exercise of its sovereignty and according to its constitution procedures which would require the consultation and the assent of the constituent State to separate it, but that is the kind of sovereignty that Professor Dicey spoke of when he said that a Parliament can do everything but make a man a woman. But that sovereign right is not what is at issue here. The issue is : what was the formal relationship which was contingent, which was conditional and which could be altered ? Even if it were so, then a dispute about territory, to which the previous representative in this Chair, Mr. Gopalaswami Ayyangar, referred to and refuted, would have been very simple ; but there

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is no such thing.

I would refrain from quoting the general principles on this subject, but I want to refer to another instance, particularly in order that the representatives of the United Kindom and Australia can come nearer to this problem. Australia has six States. It is not a confederation. But power is much more dispersed, shall we say, than in Canada—and Western Australia, at one time, had ideas of separation. A plebiscite was taken. Some 130,000 people—in round numbers—voted for separation, and 30,000 people voted for remaining in. The plebiscite, then, was in favour of separation. That was before the Statute of Westminster, and therefore any alteration of the law would require the consent of the British Parliament. It went to Parliament, and the Parliament appointed a joint committee of the two Houses which sits in judicial session on these matters. The case was argued by counsel on both sides, and the parliamentary view about this was recorded in the joint committee's decision—that Western Australia could not secede. At any rate, if it were to secede, the decision had to come from the Australian Parliament—and then it would not be secession, but it would be separation.

The right of secession, then, does not exist in our federation. This may be abstract law, but it is of very great importance to us. And I want to ask the members of the Council to address their minds to what would happen to what is now called India if this principle were not strictly enforced.

I have mentioned that there were 562 states before the British went away. A handful of them are part of Pakistan ; the remainder are part of the Indian Union. If every local Maharaja had a different idea the next morning and started seceding, our unity would disappear in no time. What is applicable to Kashmir would be applicable to every state that has acceded if once we said that the accession is not permanent but provisional.

Therefore, the Government of India, out of considerations of security, out of considerations of international law

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and the law of India, and the law that has been given to it by the British Parliament, cannot ever accept the idea that accession is anything but an indissoluble bond. When Kashmir acceded, that matter was finished. Therefore, there is no such thing as going out. In the United States, as I said, they decided in other ways. Accordingly, any suggestion to us that the accession is provisional or temporary is very wrong.

We might then be asked: What is the meaning of the letter written by the Earl of Mountbatten, when he was Governor-General of India, to the Maharaja, about consulting the wishes of the people ? I do not want to evade this question.

As I pointed out, there is a document of accession. There is an offer and there is an acceptance. That concludes the arrangement. I will not call it a contract—but that concludes the arrangement. The letter of the Governor-General is a separate document and has nothing to do with this. What does that document do ? It makes no guarantees. It expresses the wish of the Government of India—not as part of the law, but as part of a political policy. We are entitled to ask that the Security Council should make a distinction between what is a policy of a Government at any time and the constitutional law or the principles of international law that govern these matters.

Therefore, when the Governor-General of India wrote to the Maharaja and said "In accordance with the general policy that we follow, we will consult", he did not say anything about a plebiscite ; he said that the wishes of the people would be consulted. I shall deal with this more in detail when we consider the question of the plebiscite. Whatever we may have said in that way has, first of all, nothing to do with Pakistan and nothing to do with the international community, it is something between the people of Kashmir and ourselves. It is a pledge to them and to nobody else.

The Foreign Minister of Pakistan has quoted a telegram in which my Prime Minister says to the former Prime Minister of Pakistan, Mr. Liaquat Ali Khan, that this is a pledge to all the world—a pledge to you and everybody else [761st meeting, para. 24]. I am going to deal with those telegrams of the

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Prime Minister, because they must be read out in the context in which they happened. And we have always communicated this view to the Government of Pakistan.

In the telegram of 31 October 1947, from the Delhi to Karachi the Government says :

> "Kashmir's accession to India was accepted by us at the request of the Maharaja's Government and the most numerously representative popular organization in the State, which is predominantly Muslim. Even then, it was accepted on condition that, as soon as the invader has been driven from Kashmir soil and law and order restored, the people of Kashmir would be able to decide the question of accession".

That is why the Constituent Assembly becomes important —because, while we have no international commitment in this matter, we have a moral commitment to the peoples over there —that commitment in the context of subsequent events. Therefore, when we consider this question of consulting the wishes of the people, the plebiscite and so on, we should bear in mind that there are two aspects of it. One is the aspect of whether there is a commitment by the Government of India to other parties than the Security Council of the United Nations, and the other is the aspect of whether there is a commitment that has come in the context of the United Nations. And that is where consultation of the people has arisen.

First of all, the reason, for stating this wish was the previous history of Kashmir. Kashmir was ruled at that time by a Maharaja who was far from having given it a popular Government. The leaders of the national movement were in prision. The national movement in India was in close association with the national movement of Kashmir, and the leaders of the Indian national movement had shared the prison life of these people. So this great national movement, which was kept under suppression by the Maharaja, really represented Kashmir in a political and social sense. And a Government like the Indian Government, which had grown out of a national movement

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after a peaceful revolution, would not have felt happy in merely accepting the accession—not for legal reasons, but political reasons—of the Maharaja. It therefore consulted what was at that time the only widespread movement in the place—the National Conference.

While we are on this subject, it is well to say that the national movement in Kashmir, started as a communal movement. It was first called the Muslim Conference—and then, as soon as it became mature, it dropped this sectarian outlook and made itself national. For twenty or twenty-five years, it struggled and endured all the rigiours of opposing the law, and went in and resisted the Maharaja's rule.

Therefore, when we accepted this accession, we did the next best thing we could. And after that, if conditions had not been what they were, that is to say, if the country had not been invaded, if there had not been all that followed in the wake of the invasion, if the country had not been divided by the cease-fire line into the occupied part and the free part—the part occupied by Pakistan and the part that is free in India—then it would have been possible to do something else.

It is in that context that the telegram to which the Foreign Minister of Pakistan has referred was sent to the former Prime Minister of Pakistan. And I would request the Security Council to read the text of that telegram, because it was more a message from the heart than from any political deliberations. It was a time when India and Pakistan were emerging from the background of the great mass slaughter on the north-western frontiers, and it was hoped on both sides to prevent any further spread of this bloodshed.

If the telegram is to be quoted, the next paragraph should also be read. The Foreign Minister of Pakistan quoted a paragraph—and it is accurate as far as it goes. But I submit that the Security Council, in looking at the document, has to look at the previous and the succeeding paragraphs, if necessary. Now, this is what the succeeding paragraphs say :

> "I have no doubt that you realize that the raiders from the Frontier Province or along the Murree road came

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from Pakistan territory and that it is the easiest thing in the world to stop them at the two bridges which connect Pakistan territory to Kashmir."

In other words, it was an appeal to him to stop the bloodshed at these bridges. They were not so prevented, and the equipment of arms, including artillery and automatic weapons, bears witness to the help being given them. The telegram goes on :

> "We are credibly informed that regular officers of the Pakistan Army are advising these raiders. Even now, it should be easy for your Government to stop the passage of them and their supplies to the Kashmir territory."

Now, the statement made by Mr. Khan Noon should be read in the eontext of the telegram of 31 October 1947 from the Prime Minister of India and of the reply by the Prime Minister of Pakistan.

At the 761st meeting of the Security Council, I said that Mr. Khan Noon had referred—not only as regards the subject with which I am now dealing, but also as regards other subjects to private conversations between the Prime Ministers. I asked the Council's indulgence—and it was freely given—so that I might have an opportunity to consult my Prime Minister. At that time, I did not have before me the full text of the telegram in question. I have now obtained the necessary information from my Prime Minister. This is what he said :

> "As far as we can find out, Sir Firoz Khan Noon's references to statements by me all relate to certain messages sent by me to Liaquat Ali Khan within the first ten days or so of the invasion of Kashmir in 1947."—I would ask the Security Council to place itself within the context of that background.—"During those days, we had no knowledge of the part that the Pakistan Army was playing in this invasion—that is, obviously helping the raiders. It was later, in November, that we came to know of the presence of the Pakistan Army itself in Kashmir, because

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our troops came into contact with them there. You will notice"—and here the Prime Minister is referring to me—"that, at the time that I had suggested to Pakistan to make a joint request to the United Nations to undertake a plebiscite in Kashmir, Pakistan did not accept this, and in fact continued its aggression for a year subsequently, that is, throughout 1948.

"We went to the Security Council to avoid all-out war with Pakistan. Later, the fact of Pakistan's aggression came out clearly. The military situation in Kashmir State began to be unfavourable to them.

"The resolution of the United Nations Commission of 13 August was agreed to by India, subject to clarifications. Pakistan did not agree to this resolution and continued the aggression. Owing to a further deterioration of the military situation, they agreed to the United Nations resolution of 5 January, which supplemented the 13 August resolution."

Now, this goes back to a very early period of the tumult. It was our hope that Pakistan would join us in settling the matter. At this point, I should like to say something that I shall have to repeat later. If an offer is made and it is not accepted at the time it is made, it cannot be held for generations over the heads of those who made it. It is quite true that at that time we told Pakistan : "Let us go to the United Nations together and ask for a plebiscite." They did not agree. When they did not agree, that offer lapsed. They cannot come here since years later and say : "You mentioned the word 'plebiscite'." That is the position. We have made many offers to Pakistan at various times. Some of these offers may be reconsidered, if necessary, when the time comes. But, if an offer made to an opposing party is not accepted within a reasonable time, it cannot be maintained that it is still an open offer. The offer terminates when it is not accepted. In very many cases, we have said that explicitly; where we have not done so, it must be taken as the normal state of affairs.

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This is the position as regards accession : there can be no conditional accession. That would be against our constitutional procedures. It would amount to denying citizens of India the right to live in a free country, where they have the fundamental guarantees of freedom; it would amount to making those citizens run that risk of having to live a different kind of life elsewhere—a risk which we are not prepared to have them run.

It has been said that we obtained this accession, on the one hand, by force and, on the other hand, by fraud. In anything that I shall now say on the question of force, I do not wish to be understood as referring to the word "fraud". So far as force is concerned, I would say this : force did play a part in this accession. Force affected the timing so that the Maharaja had no alternative but to ask for protection. Apart from any questions of accession, apart from any questions of the law relating to this matter, I would ask the Security Council this question in all conscience : if a State is being invaded, is it not the most natural thing in the world for that State to ask a neighbour to come to its protection ? Is such a request to be regarded as the imposition of force from outside ? We used no force in connexion with the accession.

I believe that the Security Council is familiar with communications in this respect from General Lockhart, the British Commander-in-Chief of our Army, and from Air Marshal Elmhirst, the head of the Air Force at that time—in any case, I shall circulate these communications. These officers were commissioned by His Majesty the King of England, and were on temporary service with us. They had nothing to expect from us by way of reward, but they categorically stated that any suggestion that there was any conspiracy in connexion with this accession was entirely wrong.

Thus, I repeat, we used no force. The only force we used was that necessary to repel the invader—and I believe that is a force which we are entitled to use, and indeed are enjoined to use, under the Charter of the United Nations.

With regard to the other suggestion that some sharp

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practice was involved, I set out this morning the conditions of the standstill agreement. Had the State concluded the standstill agreement with us, we should immediately have become responsible for its foreign affairs, defence, and communications—but, as I said this morning, this matter was interrupted by the invasion. The Security Council will recall the chronology of the invasion which I read out this morning.

Therefore, it can be seen that it was not we who used force—or that other word which I do not want to use. The accession was legal. As I have already said, at one time, before the Maharaja had made up his mind, we asked the Governor-General to tell him to accede to Pakistan if he so wished. Lord Mountbatten told the Maharaja categorically that we would not regard such accession to Pakistan as an unfriendly act. But that was before all these events which I have described took place. Thus, there was no question of our trying to inveigle the Maharaja into any kind of accession.

Questions may be asked regarding the right of the sovereign—that is, the Prince—to make the accession for the State. In this respect, we have the very reputable and, in this particular case, very helpful authority of Mr. Jinnah. Mr. Jinnah was President of the Muslim League and a founder of Pakistan He said the following on 17 June 1947, before he became Governor-General of Pakistan :

> "Constitutionally and legally, the Indian States will be independent, sovereign States on the termination of Paramountcy, and they will be free to decide for themselves to adopt any course they like. It is open to them to join the Hindustan Constituent Assembly—"that was what they called us—,"or the Pakistan Constituent Assembly"—that was their name—, "or decide to remain independent.... I am clearly of the opinion that the Cabinet Mission's memorandum of 12 May 1946 does not in any way limit them [in this choice]."

Just two weeks before the partition took place, Mr.

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Jinnah reiterated this attitude before the Muslim League. He said :

> "They are free to join either of the two dominions, or to remain independent. The Muslim League recognizes the right of each State to its destiny."

There are other statements by Mr. Jinnah in which he says that the person to whom the accession should be offered is the Ruler. If that were not the case, there would be no legality. The Ruler is the repository of power. Whether, morally speaking, he is democratic or not is another matter. In an Indian State, however, all power flows from the Ruler—in some cases, this is true only in theory; in many cases, before independence, this was also true in form. There was, therefore, no one else who could have offered the accession.

I come now to the question of the Constituent Assembly. In acceding to India, every State—not only Kashmir—had the right, if it so wished, to call its own Constituent Assembly. They could have discussed various other matters, such as the allocation of various sources of revenue and all kinds of things like that. But the majority of States, in fact all of them after sometime—some of them had toyed with the idea—decided that it was a waste of time and energy in procedure, so they elected members to the Indian Constituent Assembly. When the subject was under discussion and they did not see the reason, the princes of India—patriotic men and women as they were—all realized the importance of allowing a united India to emerge, and it was the princes who came forward, without making any difficulties in regard to this matter, and decided to go into the Indian Constituent Assembly.

But in Kashmir a different situation had arisen on account of this trouble, and therefore that matter was left alone. Besides, in Kashmir, there had been a powerful national movement which in 1944 had asked for a constituent assembly, and their demand for a constituent assembly is part of their national upbringing. I would ask the Security Council whether

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any democratic government could disregard a very well established feeling of that kind.

What I am here concerned in pointing out is that this idea of a constituent assembly was not something either strange in the relationships between India and the Indian states, or something that we conjured up just because the Security Council. It was there long before there was an invasion of Kashmir, it was part of the demand of the people to the Maharaja. But the Maharaja had his own plans—like some countries have for their colonial territories and will not give them any power—and he would have none of it.

So the national movement in Kashmir wanted this constituent assembly. Then came the war, the invasion and all these troubles and the matter was kept in suspense. Kashmir acceded in three main subjects only. There were various other matters, because under the British rule there varying relations between British India and the Indian States, and, in the case of Kashmir, there were a large number of problems, of customs and so on, to be resolved. So the people decided to have their own Constituent Assembly.

What does this Constituent Assembly amount to ? So far as the Security Council is concerned it has to look at the documents. These are constitutional documents and I would ask the Council to look at the document which is the source from which the Constituent Assembly in its present form derives its existence ; then its scope will be seen ; because it has been presented as if this Constituent Assembly were a device rather in disregard of all other processes. It is contained in the proclamation of the Yuvraj of Kashmir, the son of the Maharaja, who is elected by the people every five years—this is a democratic process. He is the head of the State, and he issued a proclamation on 30 April 1951, and this is the proclamation :

> "*Whereas* it is the general desire of the people of the State of Jammu and Kashmir that a Constituent Assembly should be brought into being for the purpose of framing a

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constitution for the State" (that is its terms of reference).

"*Whereas* it is commonly felt that the convening of the Assembly can no langer be delayed without deteriment to the future well-being of the State" (again a purpose with which we do not disagree),

And whereas the terms of the proclamation of the Maharaja" (his father) "dated 5 March 1948 in regard to the convening of a national assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation" (it out of date),

"*I, Yuvraj Karan Singh, do hereby direct as follows* :

"1. A Constituent Assembly consisting of representives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a constitution for the State of Jammu and Kashmir :

"2. For the purpose of the said elections the State shall be divided into a number of territorial constituencies each containing a population of 40,000 or as near thereto as possible, and each electing one member ; a delimitation Committee shall be set up by the Government to make recommendations as to the number of constituencies and the limits of each constituency ;

"3. Elections to the Constituent Assembly shall be on the basis of adult franchise, that is to say, every person who is a State subject of any class, as defined in the notification No.. , is not less than twenty-one years of age on the first day of March has been a resident in the constituency for such period as may be prescribed by the rules, shall be entitled to register in the electoral rolls of that constituency, provided that any person who is unsound mind or has been so declared by a competent court, shall be disqualified for registration ;

"4. The vote at the election shall be by direct and secret ballot;

"5. The Constituent Assembly shall have power to act notwithstanding any vacancy in the membership thereof"

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—this is in order to provide for the places from which people could not be elected, in the occupied area : there again, they tried to work it out as smoothly as possible without talking about annexation or anyting of that sort; they simply left those places vacant ;

"6. The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business ;

"The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation."

Then it goes on to say that all things done before the issuing of this proclamation with a view to facilitating the provision of electoral rules for the puropse of election to the Constituent Assembly shall, insofar as they are in conformity with the provisions of this proclamation (therefore anything that is not in conformity with this proclamation, or the decision of any conference, is not binding at all), will be deemed to have been done or taken under this proclamation as if it was in force at the time such things were done or such steps were taken.

This is the proclamation which states the terms of reference so to speak of this Constituent Assembly. It is quite clear from this proclamation that the function of this Constituent Assembly is to make a constitution for Kashmir. It could not make a constitution for defence, external affairs or communications, or do anything against the fundamental rights of the Indian Constitution, because it had accepted accession by that time.

Now we turn to the document which is the Constitution adopted by the Constituent Assembly and look at what it says. The burden of the argument here is that this Constituent Assembly is going to create a new relationship, and my answer is, in terms of international law : the actions of a Constituent Assembly are not creative, they are merely declaratory they do not make anything new. What does it say ?

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"We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of the accession of this Sate to India"—if anything is wrong, it is the accesion that is wrong not the Constituent Assembly ; the relationship with India was not brought about by the Constituent Assembly, it was brought about by the accession—, "which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure to ourselves : justice, social, economic and political ; liberty of thought, expression, belief, faith and workship ; equality of status and of opportunity ; and to promote among us all fraternity assuring the dignity of the individual and the unity of the Nation ;

"In our Constituent Assembly this seventeeth day of November, 1956, do hereby adopt, enact and give to ourselves this Constitution."

So if there was a date, that was 17 November 1956. Secondly, this Constitution creates nothing. It is in pursuance of the accession. If the relationship of Kashmir is not acceptable—as it is not—to Pakistan, then the thing to quarrel with, so far as the Constitution is concerned, is the instrument of accession and the Government of India. The Constituent Assembly could do nothing ; it was done in pursuance of the accession. In other words, this is the act of a sub-sovereign body. This Constitution is for the internal government of a constituent State where an enormous amount of social reform is taking place, where land reform has resulted in the abolition of the old form of landlordism and where no one can hold more than twenty-three acres of land, where education has spread. The people there want to arrange all their economic affairs.

Further more, I want to drawn the Council's attention to part I of the Constitution, which states, in section 1, paragraph (2) :

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"(2) This section and sections 2, 3, 4, 5, 6, 7, 8 and 158 shall come into force at once"—that is to say when this Constitution is put in draft—, "and the remaining provisions of this Constitution shall come into force on the twenty-sixth day of January, 1957..."

Now what are the reserved clauses ? I have mentioned sections 2, 3, 4 and 5. Sections 3, 4 and 5 read :

"3. The State of Jammu and Kashmir is and shall be an integral part of the Union of India."—That provision came into force in November.

"4. The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under the sovereignty or suzerainty of the Ruler of the State.

"5. The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India."

All those provisions which relate to federation matters, to matters of the relationship between the State and the federation, are matters of past history.

In this connexion, the Presidential Order of 1954 is important. That is part of our Constitution. It is not as though the 26th were a zero hour. As a matter of fact, the Security Council is in a somewhat difficult position. Actually nothing will happen on 26 January except, in all probability, before midnight of the 25th the Constituent Assembly will dissolve itself.

Can the Security Council tell the members of the Constituent Assembly that they should not dissolve the Assembly ? The Security Council has been asked to put itself in a position where its actions would have no meaning in this connexion. If there were any issue, that issue should be in regard to accession. Is Kashmir a part of India ? There I think the Security Council is tied up by the findings of the Commission;

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it is tied up with constitutional law and practice ; it is tied up with the law of federations and, what is more, it is tied up with the principles of the Charter of the United Nations. The Security Council, of course, in its profound wisdom may do what it likes. I now speak from memory, which is not always very good, but the Foreign Minister of Pakistan either said or suggested that there should be some restraining action in the character of an injunction. Members know that an injunction is an equitable process, a process arising from equity. And what invader can ask for equity ? Therefore, that question does not arise.

I want to submit, therefore, that the whole of this crisis atmosphere which has been created about 26 January is just unreal. The 26 of January with us, as with Mr. Walker in Australia, marks the foundation of our Constitution. It is India's national day. Therefore, the State thought it fit to finish its municipal constitution on that day. Its conduct is muncipal —it is dealing with its legislature, how many members of Parliament there should be, what to do with the land laws, what taxes they should raise and are competent to raise in connexion with the Federation of India, what the powers of the Speaker of the House or the Advocate-General might be— these are the matters contained in this Constitution. A great many of them are already in operation. The Constituent Assembly in Kashmir ; as was the case in India, sits both as a Parliament and as a Constituent Assembly. When it sits as a Constituent Assembly it is presided over by its chairman. When the chairman leaves the chair and the speaker presides, it becomes a Parliament. The same body functions in two different ways. Whenever the Constituent Assembly completes consideration of a particular measure which is necessary for the welfare of the people, the Parliament enacts it. It is part of what has already been done and there is no crisis of zero hour, there is no action from which restraint can be exercised. The only thing that could be restrained would be to undo the act of accession. But the right thing for the Security Council to do, in the submission of the Government of India, would be to ask for the observance of the Charter of the United Nations

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and for an end to the aggression. That is the problem before the Council.

I have taken this out of the general scheme of the argument in order to meet the wishes of the various members of the Security Council who had intimated privately that they would like to hear about it. That is the position as regards the Constituent Assembly. I hope that the Security Council is not going to find itself in a position where it will subscribe to a decision which is so devoid of reality, which will expose it to ridicule, which is so unconnected with the events of the day and which is contrary to the constitutional procedures of a sovereign State, of a Member State whose Constitution is presumed to be known to the United Nations in international law. What is more, there are large numbers of people who subscribe to the same kind of legal system to which we subscribe.

I should like, therefore, to erase from the minds of members this idea of a crisis or a zero hour or of something happening on 26 January. It is a day which is observed in every part of India in general jubilation as the day when the Constitution of India was inaugurated. It traces its origin to midnight, 26 January 1930 when, on the banks of the Ravi, the present Prime Minister, the President of the Indian National Congress, stated that all men are entitled to their freedom. Therefore, should any country oppress us, where there is a rule of that kind we shall try peacefully to terminate it. That was the declaration of independence in 1930, and this is the anniversary of that day.

There is nothing in this, therefore, which should attract the attention of the Security Council with regard to the Constituent Assembly process. I have taken pains to inquire about what actually is going to happen on that day. I understand that all that will happen will be a formal meeting of the Assembly in order formally to wind up its affairs because it no longer will have any function. Parliament may then sit the next day. This was not arranged in view of the meeting of the Security Council. It is part of its normal proceedings. It has finished its functions long ago. There is no particular reason why it should do this on the 26th, except that it may thus spare the

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expense of having two separate celebrations, one to wind up the Constituent Assembly and another for the national day. The appointed day in this respect follows the Constitution of India. (In fact, the Australians are always competing with us in this connextion with the result that we cannot get enough people to come to our functions;)

I have so far argued that the claims in regard to this are based, on the one hand, upon something which is extra-legal and extra-constitutional and outside the decisions of the Security Council, and I have submitted the views of the Government of India in refutation of that position. There are no considerations which are so generous in this matter, no considerations which, on their own merits, indicate that this must have been the course. To the extent that the Foreign Minister of Pakistan has quoted authority, I have proved, if my documents are correct—and they are open for scrutiny to anyone—that the conditions to which he referred not only did not exist but that they referred to other matters. The legal and constitutional aspect of the problem relates to the accession.

I should like once again to repeat that this is a matter—and I quoted this position this morning—on which the Government of India has at no time made any recession. What is more, the Commission has at no time raised this point; that is to say, it to say, it is accepted on all side. The members were concerned with the issues of international peace and security, and that is the function of the Security Council.

I ask you Mr. President, to look at Chapter VI of the Charter, or even Chapter VII, if you wish and I ask where is the provision to challenge the merits of accession. The Security Council is called upon here to deal with pouring oil over troubled waters. So far we are concerned, we have not only helped to fetch the oil, but we do not trouble the waters at all. We ask the Council to restrain others from making the water muddy.

If those two issues are out of the way, then what remains? What remains is aggression. That is what remains in any claim that can be made with regard to what is called a plebiscite.

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As regards the commitments which we have made, I am prepared to face them quite squarely, because, the Government of India has a responsibility to explain its position before a world body such as the United Nations. We did not ask the Security Council at the end of five years to spend several days on this matter. Our sister State of Pakistan desired to do so and we were quite prepared to come here either in June of last year, when there were rumours about it, or at the present time. You, Mr. President, notified us about this meeting, and we are here.

Now, what was this commitment ? The commitment was that in various resolutions it has been said that it is the wish, that it is the desire, to refer this matter to the people of the country, and so on. I do not know whether you want me to quote this again, as I have quoted it so many times, but it is all there. No one, least of all any responsible person from India, would say that the question of plebiscites was not considered at one time under certain conditions. It is an error, if I may say so, to ask a Government to consider what it has offered and what it has considered outside the context of any circumstances. Any lawyer here would know that even in a civil matter, even in a matter between individuals inside a country, all the surrounding circumstances have to be taken into consideration. The nature of these commitments is two fold. The plebiscite, I think, has, first of all, two aspects, and one aspect has two sub-aspects.

One aspect is the commitment we may have made to the peoples of Kashmir, that is to say, what came out of us by our own volition in the context of the national life of India. That is represented by the communication made by Lord Mountbatten to the Maharaja on 27 October 1947, which states that : "In consistence with their policy..., it is my Government's wish that . . . the question . . , should be settled by a reference to the people." He did not say anything about a plebiscite. "Reference" might be any kind of reference : it might be a referendum; it might be plebiscite; it might be a general election; it might be a Gallup Poll; it might be anything. That was the position at that time, but let us assume that it was a plebiscite.

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Even he attached conditions to it : when the soil was cleared of the invader and peace and order was restored. I cannot state the authority of my distinguished colleague from Pakistan on the question of peace and order, because in one part of his statement he says there is peace and order but in another he says there is not. I think he is right, because there is peace and order in the territory we administer.

That was one commitment. Now I should like you to examine what it was. This is very much like an equitable doctrine, and therefore I think that one may make an analogy. Suppose that you, Mr. President, with all the wealth you possess, make a testamentary disposition to your children, willing them your property and saying that you give so much money for this and so much for that, and that at the end of it you say to your eldest son : "It is my wish that out of this money you should build a library", or something of that character. That has no force in law; it is the expression of a wish. All that binds the young man is what you have said. The expression of a wish is not binding in any equitable relations. It may be respected. We try to respect it.

Therefore, the first commitment, if it was a commitment, is to the people of Kashmir. No other party comes into it. Secondly, it is in consonance with the policy of the Government of India. Policies of Governments are matters which the Governments alone can decide. Thirdly, it would be effective when the soil was cleared of the invader; and, fourthly, when peaceful conditions had been restored.

That is why my friend and predecessor, Mr. Gopalaswami Ayyangar, when he came here, said that the garrisons of India must garrison the northern area, that the troops must be kept to prevent tribesmen coming across the frontiers. The whole of the territory comes under the sovereignty of Jammu and Kashmir, as is admitted by the Commission.

Therefore, that condition, even so far as we are concerned, does not exist. But we did our best. We hung this up for some time, right from 1948 till about 1952, hoping that something would happen.

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The members of the Security Council are all of sovereign independent States given to the democratic way of life. Can the Security Council ask us that the people of Kashmir should be without franchise, without the guaranty of fundamental rights, without being able to introduce the economic legislation that is necessary for their planning, their education and things of that character ? How is that to be done ? Is it to be done by command from the Government of India ? That is not how our country is governed. These provisions are made by the Constituent Assembly for that reason. Therefore, while it was not possible for us to do it in one way, we did it in another way.

So in Kashmir there is a legislature, a Constituent Assembly that functions. In that parliament there is an opposition, small as it is. In 1952 there were fifteen newspapers and journals in Kashmir, in a very small area where the majority of people are not literate; today there are forty-eight. What is more, as I shall point out later, in the last two or three years more than 500 primary schools have come into this area. So it can be seen that the Government of Kashmir is advancing all State matters in this way. Therefore, to the extent that the wishes of the people could be consulted, we did so.

The Foreign Minister of Pakistan also made a reference, not very complimentary to us, to the election of this Constituent Assembly. I am prepared to face this issue also. The proclamation asked for a universal franchise, secret ballots, and so on. The Constituent Assembly elections are announced; the electoral rolls are prepared; the electoral constituencies are delimited. All the arrangements were made. The candidates come forward. A fact that has not been mentioned is that the opposition candidates who afterwards withdraw did not come from the people who are either Moslems or those who wanted to go Pakistan or were suspected of wanting to go to Pakistan; they came from the orthodox Rajput Hindu sections of the community who were against India for its being a secular State. We did not stop them, but they realized that in this large country, where there is a big nationalist movement, they did not have a chance. Having filed their nominations, and all arrangements

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having been made before the election dates, they withdraw their candidacy.

According to our election laws, in common with the election laws of the United Kingdom, Australia, and, I believe, other countries, each candidate has to deposit a certain amount of money, and if he does not poll one-tenth of the votes he forfiets the deposit. What is more, he looks very ridiculous if he polls a microscopic number of votes. These people, having used the elections for propaganda purposes, withdrew their candidacies. They were not forced to withdraw or anything of that character. The result was that the others were returned unopposed. There are many unopposed elections of this type. (Whilst the case is not an exact parallel, I would ask my colleague from Pakistan to look at the elections in India in 1937. Then a national movement of that character, in the context of the first election, swept everything before it.) The test of this is in the municipal elections. Where there is no forfeiture of deposits there is no obligation of withdrawal. There are many elections of municipalities and local bodies in Kashmir, and in all these elections the same party has come out on top. Therefore, the idea that there was a one-party state, or a kind of election to order, is entirely inconsistent with what goes on in India.

With great respect to the Security Council, I would submit that when a country has the largest democratic electorate in the world, when it has a Constitution guaranteeing the fundamental rights, when every man and woman in it may vote and, what is more, when 200 million people will go to the polls in two months in that country, I think that to speak of such a country as stifling elections is a charge that cannot pass muster. I shall not say anything more than that.

You cannot compel people to be opposed. If there are unopposed returns, it does not mean that the system is not functioning. The Constituent Assembly does not sit in secret. The World Press is there. Kashmir is the centre of the World's visitors. Last summer we had 62,000 people in Kashmir as visitors, and 9,000 of them were foreigners, and the majority Americans. And they did not stick to the towns. They went

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around all over. Therefore, any suggestion that this Constituent Assembly was an arranged pocket affair is very much of a mistake. What is more, in that Constituent Assembly, as regards the very men, whose names were referred to by the Foreign Minister of Pakistan as now having fallen from favour, and who therefore were in prison, when I go into the facts, the Foreign Minister will probably be pleased to withdraw some of these names. But at any rate that is another matter. However, what I say is this : that the candidates who were elected are people who have been participants in the national movement for a very long time.

For the convenience of the Council I have submitted the statement made by Sheikh Abdullah to the Jammu and Kashmir Constituent Assembly [S/PV. 762/Add. 1, annex VI]. It is an extremely interesting document and we do not make any apologies for submitting it. Sheikh Abdullah is in detention. He is in detention under the law of Kashmir. I will come to that in a moment, before I finish the whole submission.

In this address to the Constituent Assembly he has put to them the pros and cons of accession. That does not bind us. That is the internal matter of the Kashmiris, because the accession is bound, as I said, by the law. But he, as an internal Kashmir leader, can tell the people what is good and what is bad for them; and he has said what are the advantages, what are the disadvantages, what is the case for remaining as an independent country and how long they would remain independent, and he has also stated some very lucid facts with regard to the invasion and the so-called liberation of Kashmir by the invaders. Therefore, I think that whatever may be the communications that now come, it is as well to read the case that was presented to the Constituent Assembly, because that shows the opportunity to discuss the pros and cons of it.

The Constituent Assembly did not do its work in one day. In this Constituent Assembly members spoke about each of these various aspects, on what their State should have, more or less, for its defence, its industries and everything else. Therefore, to suggest that this Constituent Assembly was some kind of a timetable affair is a misnomer. Thus, so far as we are concerned,

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on the commitments to the people of Kashmir and the plebiscite, on that leg of this argument, we have discharged our obligations. Where we have not been able to discharge our obligations so far as the form goes, if that is considered necessary, we have been impeded by acts which are beyond our control, namely, invasion, unsettlement, occupation and the division of Kashmir by force of arms.

Sheikh Abdullah said :

"As a realist I am conscious that nothing is all black or all white, and there are many facets to each of the propositions before us. I shall first speak on the merits and demirits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative governments have been entrusted with the administration. Steps towards democratization have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and, above all, built up their very independence of spirit. Natuarally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy."—We were not permitted to do so by our Constitution—"This experience has strengthened our confidence in them as a democratic State."—This is Sheikh Abdullah speaking.

"The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all, wtthout distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups

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is the legacy of Imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution has amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.

"The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

"We are also intimately concerned with the economic well-being of the people of this State. As I said before while referring to constitution-building, political ideals are often meaningless unless linked with economic plans. . . As you know, and as I have detailed before, we have been able to put through our 'land to the tiller' legislation"—and he goes on to talk about legislation that has taken place.

Then he continues as follows :

"In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods, for which we are justly known all over the world, have been centred in India."—That is, their economic life is tied up with ours.—"The volume of our trade, in spite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry; we need help to develop our resources. India, being more highly industrialized than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing . . . It is around the efficient supply of such basic necessities that the standard of living of the man-in-the-street depends."

Then he goes on to talk about the disadvantages :

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"To begin with, although the land frontiers of India and Kashmir are contiguous and an all-weather road link dependable as the one we have with Pakistan does not exist."—But now it does; at the time he spoke it did not—"This must necessarily hamper trade and commerce to some extent, particularly during the showy winter months. But we have studied this question and with improvements in modern engineering. If the State wishes to remain with India, the establishment of an all-weather stable system of communication is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries logs to the plains."—Their timber trade is with Pakistan.—"In reply to this argument, it may be pointed out that accession to India will open up possibilities of utilizing our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters and labourers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber-carrying trucks, river transport is a crude system which inflicts a loss of some 20 to 35 per cent in transit.

"Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardized."—He has put in every argument.—"This would happen if a communal organization had a dominant hand in the government, and the Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered judgement that the presence of Kashmir in the Union of India has been the major factor in stabilizing relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraph-

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rase : "I lift up mine eyes unto the hills, from whence cometh my help."

"As I have said before, we must consider the question of accession with an open mind, and not let our personal prejudices stand in the way of a balanced judgement. I will now invite you to evaluate the alternative of accession to Pakistan."

Now he has dealt with India. He goes on :

"The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, a big majority of our people being Muslims, the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power."—I am only quoting Shiekh Abdullah. He goes on :

"In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action. Some argue, as a supposedly natural corollary to this, that on our acceding to Pakistan our annihilation or survival depends. Facts have disproved this. Right-thinking men would point out that Pakistan is not an organic unity of all the Muslims in this sub-continent. It has, on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistans at least a thousand miles apart from each other. The total population of Westeen Pakistan, which is contiguous to our State, is hardly 25 million"—I was wrong; it is less than I said,—"while the total number of Muslims resident in India is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims, if they are worried by such considerations, should choose the 40 millions living in India.

"Looking at the matter too from a more modern political angle, religious affinities alone do not and should not

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normally determine the political alliances of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

"We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State ?"—Out of the 4 million population of Kashmir in 1941, more than one million were non-Muslims, and a great many of these were Buddhists of Tibetan race.—"As things stand at present, there is no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair..."

I will leave this now and come back to the other course he has pointed out. I do not want to weary the Council. The third course which is suggested is : "Why do they not remain independent ?"—And I am reading this in order to show that it is not as though these people were jockeyed into some position. They had all this before them.

"The third course open to us still has to be discussed. We have to consider the alternative of making ourselves an "Eastern Switzerland", of keeping aloof from both States but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it would also have obvious advantages. But in considering independence we must not ignore practical considerations.

"Firstly, it is not easy to protect our sovereignty and independence in a small country which has not the sufficient strength to defend itself on our long and difficult frontiers bordering on many countries.

"Secondly, we must have the good will of all our neigh-

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bours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression ? I would like to remind you that from 15 August to 22 October 1947 our State was independent"—this was before accession—,"and the result was that our weakness was exploited by our neighbour, with whom we had a valid standstill agreement. The State was invaded. What is the guaranty that, in future too, we may not be the victims of similar aggression ?"

Sheikh Abdullah has developed this point, so I have read this out at length because this idea of accession is obtained.

Now, therefore, what is the nature of our commitments outside ? I have dealt with the position with regard to the Kashmir people and ourselves. The outside commitments are what arise from the mention—and I want to use this word "mention"—of the word "plebiscite", and from its use as a provisional mechanism, or the idea that it can be part of a plan which is a concerted plan implementing itself in consecutive stages. That is what is being argued. First of all, I do not know whether I need repeat the arguments. I said this this morning and this afternoon, but all of these commitments can be tied up in these two resolutions of the Commission—that is the resolutions of 13 August 1948 and 5 January 1949.

The resolution of 5 January 1949 is an implementing resolution. It provides the mechanism, provided the decision is made. But our commitments for a plebiscite in this matter are, first of all, conditioned by the withdrawal of Pakistan forces and nationals, by the large-scale disbandment and disarmament of the "Azad" Kashmir army, by the restoration of the unity of the country, by the return of refugees, by the restoration of law and order and by conditions of security.

I have not the resolution of August 1948 before me; if I had would probably make this statement longer, but I do not want to do so. So if the Council will recall to mind the various "whens" and "afters" and "its" that were in that resolution, it

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will appreciate that there can be no shadow of doubt in any rational mind that what was conceived was a plan conditional upon a contingency. There are two levels of conditions, and those conditions have not been performed. What is more; in our view they are incapable of performance, so that it is therefore not possible. But whether they are incapable of perfor mance or not, we had no commitment in this matter because the Government of India takes serious exception to the suggestion that we dishonoured our commitments. It is incumbent upon those who makes these charges to prove them beyond all doubt.

We have made no commitments. What is the nature of commitments, Mr. President ? You have long experience of international affairs, Commitments are treaties between nation ; they are international obligations in the way of final acts, declarations, protocols and things of that kind. In this particular case what happened was that the Commission produced a resolution and we two agreed to it. There is no bilateral agreement between Pakistan and ourselves, technically.

But all the same, we are not only prepared to say, but anxious to say that whatever there is to be found in the resoultions of 13 August 1948 and 5 January 1949, with the assurances in the context of the conditions then existing. And what is more—and this is the most important part—did not the fact that violations of the guarantees and assurances given to the Security Council by the other side had taken place before the agreement, a fact which was concealed from the Council, mean that therefore, in equity, that agreement was vitiated in its foundation because it was not reached bona fide, if the Pakistan Government knew in August 1948 that that was the position of the 'Azad' forces, as has been pointed out by the Commission. Even at the risk of tiring the Council's patience I have quoted from the reports of the Commission instead of giving them in indirect narration because I did not want to expose myself to a charge inaccurate citation.

Therefore, those are our commitments. What is their position in the context of the Charter ? These resolutions, first of all, are not Security Council resolutions ; they are, to the

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extent that they have been endorsed by the Security Council. What do they say? They are by way of recommendations—recommendations which can be implemented only if the two sides co-operate, if the two sides agree. Our side was willing to agree. It has been willing to agree, and it has tried for years to agree. But we have always said that the Government of India will never agree to the interference of Pakistan in the sovereign affairs of the State, and that the plebiscite is not Pakistan's business but has to be taken by a Plebiscite Administrator who has to decide its terms. And in any case none of these things can take place so long as the territory—more then 42,000 square miles out of 84,000—is under occupation.

I have not referred as yet to the story of the occupation of the Northern Areas. I would like to do so during the next instalment of this statement, and I have to ask all those concerned to forgive references to individuals and nationalities which are of a character which is not intended to hurt them at all since they are the facts of history.

Thus we have no commitments in this way. Our commitment is contingent upon the performance of part II, and even then—even if part II is performed—what is the promise that we have made? The promise we have made is to confer with the other side. But conferring with the other side does not necessarily mean that we have to do what anybody else says, or that the other side has to do what anybody else says. That is all the commitment in part III of the resolution of 13 August 1948. People are likely to be misled by the enormous amount of wordage there is in the resolution of 5 January 1949, but it is only a supplementary resolution. It is an implementing resolution of the minutiae and mechanism of election. Therefore, there are no commitments that can be laid at the door of India with regard to the carrying out of a plebiscite.

The next point is whether we have, by our action, made non-performance of part II possible. I think that the Security Council, and every member of it and our friends in Pakistan, would be entitled to point a finger of rebuke and scorn at us

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if it was our action that had prevented part II from being implemented, because it is not equitable to say : I will do III if II comes about, and I go out and make II impossible. But the whole history which I have unfolded is not like that. The personal conversations of the Prime Minister, who is the head of the Government of India, the aide-memoire and correspondence with the Commission are all on recorded. It is not as though it was done at some low departmental level—although that would not bind the Government of India even then. It has been carefully gone into at every point.

And then we come to the interpretation of agreements. For this purpose, if the President so desires, we could take a hypothetical position. First of all, I said that there was no agreement on the level of a treaty. There is no international agreement of the type that is a protocol or a final declaration of a conference. What there is, is an agreement on plan of settlement, which is a very different thing. Today it is us; tomorrow it may be someone else in the same position. If one cannot come before the Security Council and discuss with its representatives tentative plans, how can one carry on negotiations ? All the agreements, all the meeting of minds, all the differences between minds constitute a plan that is contingent upon another contingency.

Now, for the purpose of argument, my Government will be prepared, not to admit that there is anything more than that, but to examine this problem as though it were a treaty. And I want to emphasize this because we have suffered in the past by making hypothetical propositions. Supposing we assume—which we cannot assume—that whatever we have said in the way of a treaty is a plebiscite; what are the obligations under international law with regard to treaties ? I am not going to quote any law because this is not a juridical body but there are principles of international behaviour.

There are some conditions which are laid down for the interpretation of treaties. They are here in Oppenheim's *International Law*. If anyone is apprehensive that I might be unfair in quoting only parts of it, I am prepared to read the whole, but it will take a long time. I shall quote the parts

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which I think are relevant, and if there is any doubt, I will read the remainder.

> "It is taken for granted that the contracting parties intend something reasonable"—something adequate to the purpose of the treaty—"and something not inconsistent with generally recognized principles of international law."

I say that want the Security Council is being asked to believe that we have committed ourselves to is not anything reasonable. That is to say, to plunge a country that has got law and order institutions into a whole mixture of foreign intervention that is already on its frontier, to make this gateway of invasion into another way of interference, another way of the violation of sovereignty, is not reasonable. It is not reasonable to assume that there could be freedom of the poll in a Pakistan-occupied area when there are—as I will tell the Council later—how many divisions of the Pakistan army within five and thirty miles of its border, when there are forty-five battalions of "Azad" forces ready to line up, with modern troops and equipment. We have some idea of this equipment; we do not live far away. There are airstrips built in these places—again I am going to give the particulars. So far as we are concerned it is not a military secret, although it may be a secret to others. But there it is. When there is an armed fortress and, what is more, when there all this appeal to hatred and invasion, and language such as that used by the Foreign Minister himself - which, at an appropriate stage, I propose to quote—it is not reasonable to expect that a country will unsettle things that are settled by Latin American friends will under stand that we must let things alone is this case.

It is not reasonable now. Then it must be adequate. Would this be adequate for this purpose? It was Sir Owen Dixon who said that no plebiscite would ever be adequate because, supposing the plebiscite by majority decided for India, he said, there would still be trouble; if they decided for Pakistan, there would be even more trouble. And, what is

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more, how would the adequacy of this plebiscite be justified in the present conditions ?

Oppenheim says : It must "not [be] inconsistent with generally recognized principles of international law"—and that is the main sheet-anchor of our position. For the Security Council to take a step in this matter today which does not take our primary position—that is our territory has been invaded—into account would be inconsistent. It does not matter whether there are flaws in our claim. Kashmir was never a part of Pakistan. Kashmir never acceded to Pakistan. Kashmir was in no way historically connected with the present Pakistan, and therefore, its entry into that territory, irrespective of our claims: is an act of invasion.

Assume for the moment, for argument, what is not a fact—that our claims have flaws in them, either legal, political or moral, that would not justify an act which is a clear violation of international law, as I shall point out in the findings of the United Nations Commission. An act of taking troops across our frontiers, being responsible for the aiding of ravage and rapine, is not in accordance with recognized principles of international law. I will go further and say that many invasions have taken place since the Security Council asked that there should not be such invasions; and what is more, there has been a withholding of information from the Security Council. This is not in accordance with international law.

International law is based upon the principle of equity, of fair play and of international morality, and no party can come before this body and ask for equity unless it is prepared to deal it. The rule of equity in civil law is : those who want equity must come with clean hands.

Oppenheim says further :

> "If, therefore, the meaning of a provision is ambiguous, the reasonable meaning is to be preferred to the unreasonable; the more reasonable, to the less reasonable."

Now, we have so many pundits of English around here.

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In other words, what does the resolution of 13 August 1948 mean ? The reasonable meaning is stage A, then stage B, then consideration of stage C. That is the reasonable meaning, and an unreasonable meaning cannot be read into that document. The purpose of the treaty is to get a settlement of Kashmir—that is the consistent meaning, not the meaning that is inconsistent with the recognized principles of international law. That is the first set of conditions in the interpreting of a treaty. In the second place, the whole of a treaty must be taken into consideration if the meaning of any one of its stipulations is doubtful, not only the wording of the treaty, but also the purposes, the motives, and the conditions prevailing at the time.

There are two things here to be taken into account. Firstly, "the motives that led to its conclusion". The representatives may recall that earlier this afternoon I referred to the anxiety of the Commission to get a cease-fire. I did not do this merely to draw attention to the fact that it had some relationship with this. The motive in getting this agreement was to stop the fighting. Therefore, to talk now of something which would lead to greater violence is not in conformity with this. The second is, "the conditions prevailing at the time". I shall deal with that at length later.

Then Oppenheim stated :

> "The principle *in dubio mitius* must be applied in interpreting treaties.,"—That, again, is important—"If, therefore, the meaning of a term is ambiguous, that meaning is to be preferred which is less onerous for the party assuming an obligation"—in this case, we are asked to be the parties who are to assume the obligat.on, and, therefore, if there is an ambiguity, the meaning that is less onerous to us must be taken—"or which interferes less with the territorial and personal supremacy of a party"—what could be more on all—fours with the present case ?—"or involves less general restrictions upon the parties."

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It is also stated :

> "If two meanings of a provision are admissible according to the text of a treaty, such meaning is to prevail as the party proposing the stipulation knew at the time to the meaning preferred by the party accepting it."

That is the case here, because when we accepted the two resolutions we accepted the stipulations and the meanings of the letters of assurance and the aidememoire. These were known to the other side. Therefore, that meaning is to be preferred. There are a large number of other conditions, but these are sufficient for my purposes.

It is also stated that :

> "It is a well-established rule in the practice of international tribunals that so-called preparatory work (*travaux preparatoires*)—i.e. the record of the negotiations preceding the conclusions of a treaty, the minutes of the plenary meetings and of committees of the Conference which adopted a convention, the successive drafts of a treaty."—That is what I done, I have gone into the minutes of the Commission, into the letters, and so on—"The Permanent Court of International Justice... has frequently affirmed the usefulness of preparatory work."

Therefore, even if there were, and there is not, a high-level treaty as between our two countries, or an agreement of the nature of a treaty obligation, either registered with the United Nations or entered into with the Secretary-General, it would still be bound by these commitments. Therefore, we say that one of our commitments in this matter is accession. There we have a commitment. We have accepted the obligations which are laid on us under our Constitution. We have not only accepted a legal obligation, but also political and moral obligations, because to throw accession away would be to

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throw the whole of India into chaos and we would open the door to dismemberment, and our unity and national sovereignty is something which we prize. Therefore, under the circumstances we are not prepared to permit a challenge to the validity of this accession, That is our commitment, and on that commitment we stand.

We have another commitment, to which I shall refer at length later. That is the cease-fire commitment, and we shall honour it. But we have no other commitments.

The Minister for Foreign Affairs of Pakistan said that in regard to this Kashmir matter he had no other international obligations than those that are to be found in the resolutions [761st meeting, para. 115]. I agree with that, but to a limited extent in the sense that we have to interpret this agreement in the terms of these two resolutions to which I have referred, but if it means that the international obligations of the Charter of the United Nations are not binding, then I join issue with him. I am prepared to confirm that I subscribe to the view that in the discussion of any procedure, of any particular decision, of any agreement reached, these resolutions are what are binding in the circumstances I have submitted to you. But it would be wrong, so far as we are concerned, for a Member State to argue that there are no other international commitments. The Charter is a commitment for every State, and when the time comes to sum up these observations at the conclusion of these meetings of the Security Council, we shall fall back upon our bunden duty to ask all of you to address yourselves to the provisions of the Charter. Therefore, no Member State, in our submission, may say there are no other international obligations. I feel sure that that is not the meaning of the statement made by my colleague, but I wish to be clear on this point.

Mr. NOON (Pakistan) : I am sorry, but is a misinterpretation of my statement.

The PRESIDENT : You have no right to interrupt.

Mr. Krishna MENON (India) : I will read out the quotation. I thought that by not doing so before I could save time, but it will be seen that my slow procedure is the quickest in the long run. The representative of Pakistan said .

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"Pakistan is equally convinced that the international agreement for a plebiscite is one indivisible whole."—We agree—"No party to the dispute has the right to accept it in part. If India, a party to the dispute"—which does not exist—"makes an attempt to freeze the situation as it exists, Pakistan would consider it as a repudiation of the international agreement··· I want to make it clear that Pakistan recognizes no international obligations with regard to the State of Jammu and Kashmir except those it has voluntarily accepted together with the Government of India in the resolutions of the United Nations Commission for India and Pakistan dated 13 August 1948 and 5 January 1949." (761st meeting, paras. 115).

I should not have referred to this without quoting it, but I submit that, in my own reading of this, it does not exclude our commitments under the Charter. It simply means that there are no other agreements of the type of these resolutions or plans of that character outside these two resolutions. I was trying, in my statement, to elicit information on this point in the reply of my colleague. So far as the Government of India is concerned, for the moment we assume that this means that, as far as commitments of this kind are concerned, these are the only two resolutions. That is also our position.

152. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 764 held on 24 January 1957.*

I should like to express my appreciation to the Council for its acquiescence in the proposal made yesterday by the representative of Cuba and the Soviet Union to hold this meeting this morning instead of last night.

I was dealing yesterday with the responsibility for the non-performance or the non-implementation of the plan that was put forward by the United Nations Commission for India and Pa' istan on 13 August 1948 and 5 January 1949. The resolutions adopted on those dates together form one document

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—a plan of settlement and not a resolution with the character of a decision. That plan, I pointed out, was a plan which contained contingencies, and, for the performance of part III, which is the plebiscite, called for the achievement of what are generally called conditions precedent. The issue has been, for a long time, how these conditions precedent should be brought about. I also pointed out—and I do not want to quote the paragraphs because, in view of the President's impatience yesterday, it is better not to prolong the proceedings more than necessary—that the conditions precedent were formulated by the Commission in the light of the paragraphs I quoted.

In view of the urgency of the cease-fire because of the considerable slaughter that was going on, the very strongly expressed and repeated views of the Government of India on the necessary of avoiding further blood-shed, and the insistence of Pakistan, on the other hand, that the cease-fire could come only after the political considerations—in view of all that, this plan was put forward and accepted by us with these contingencies in it. However, the important point to remember is this : when that plan was put forward, it was not contemplated by the authors—it was not the intention of the Commission or of the Government of India or of the Government of Pakistan —that this should be something lasting over a period of eight or nine years.

At any rate, before we approach this problem, we ought to look into the responsibility for non-performance.

I not only freely conceded, but I volunteered the point, that, if there is a plan which requires conditions precedent and if one party, wilfully and *mala fide*, impedes the performance of those conditions, then there is a charge of inequitable behaviour against it. Those are the charges which the Minister for Foreign Affairs of Pakistan set out in his statement before the Council. There are eleven points put forward to show how India obstructed the performance of part II 761st meeting, paras, 48 ff.). If these were correct, they would not by themselves answer the whole case because, as I said yesterday, there are certain basic conditions which, overruling Pakistan's objections, the Commission laid down, and which are incorporated in these agreements.

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Before I attempt to deal with these points seriatim, there are two matters which I wish to dispose of. One is that I see before me a draft resolution under the names of Australia, Colombia, Cuba, the United Kingdom and the United States of America (S/3778). I want to say here and now that I am making this statement today without any reference to the resolution, and the reason I want this to go on the record is that I want the people of my country to appreciate that this resolution has been put forward by its five sponsors before hearing the statement of the representative of India—especially after I said last evening that I still had to argue this case. I am not making my detailed comment on it at the moment. All I want the Security Council to be seized of is this : for the purpose of this morning's statement, I am not taking this resolution into account.

The second matter on which I want clarification or a ruling by the President is with reference to points (5) and (6) of the speech of the Foreign Minister of Pakistan (761st meeting, paras, 52 and 53).

These refer to the good offices of Commonwealth Prime Ministers. Now if the reference implies that this matter came before the meeting of Commonwealth Prime Ministers, then on behalf of my Government I want to register categorical denial. I myself have been present at every meeting of the Commonwealth Prime Ministers since Pakistan and India became members of that group. There has been no meeting of Commonwealth Prime Ministers in the sense that these meetings, which are usually convened at convenient intervals, were devoted to this matter. This matter was sought to be raised by Pakistan and it was never agreed to be discussed.

If, on the other hand, the Foreign Minister of Pakistan is referring to private conversation that might have taken place between Prime Minister and Prime Minister, or with small groups of Prime Ministers, then I would ask for a ruling from the President. Either these paragraphs stand withdrawn or we have freedom to refer to confidential documents, because my Government cannot take up the position of having the name of our Government and our Prime Minister and of his colleagues

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used in this way without referring to documents. I would therefore like to have a ruling from the President. I have the confidential reports of these conversations. We have regarded them as top secret documents. But I will take the responsibility, so far as we are concerned, of going into their contents, provided that is the wish of the Security Council.

We cannot have allegations made from private documents without opportunity to use those documents in rebuttal. Therefore I ask for your ruling, Mr. President. Either these paragraphs must stand withdrawn or I will quote from the documents.

The PRESIDENT : The President has heard the statement of the representative of India and he cannot make a ruling on any statements made in connexion with the question before this body. The representative of India has the right to make a reply as he chooses and to make such statements as he may desire to make, as the representative of Pakistan also has the right to make his own statements and deny whatever the representative of India has stated here. But the President cannot make a ruling on a statement made by a representative before this Council.

Mr. Krishna MENON (India) : With great respect, that is all I ask for, because the responsibility for the revelation of these conversations does not rest on the Government of India. When confidential conversations are referred to by responsible persons in a forum that is not concerned with them, then the Government of India has no alternative but to tell the whole story, and that is all I ask for.

Therefore, I should like to refer to the first proposal of the statement of the Foreign Minister of Pakistan (761st meetting, para. 48). It is necessary to refer to these allegations seriatim because we are not able to subscribe to these things and, what is more, they are contradicted or modified by the documents available to the Security Council in such a way as to make this picture very different from what is sought to be presented. I will read the first allegation :

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"(1) In March 1949, the United Nations Commission convened a joint Committee of the Indian and Pakistan representatives, at which 'it was agreed that both India and Pakistan would submit their plans for the withdrawal of forces to that Committee. Pakistan did so; India first asked for more time and later refused to honour this agreement."

The charge is that the Commission asked for the withdrawal of forces, that Pakistan offered a plan and that we did not co-operate. If that were true in the way it was put, that is certainly a grave lapse on the part of the Government of India and may be counted as a point in part of non-performance.

I now wish to refer to paragraph 229 of the third interim report of the Commission. The Commission has something very interesting to say about this :

"In early March the Commission received the first concrete indication of the manner in which one of the parties envisaged the implementation of the truce···the Pakistan delegation held (a) that the objective of the truce agreement is to create a military balance between the forces on each side and (b) that the withdrawal of its regular forces depended upon plans acceptable to the Pakistan Government for the synchronization of this withdrawal with that of the bulk of the Indian forces."

What I read out now was the Commission's findings.

In another part of the report, paragraph 169, the Commission says :

"The Government of India did not agree with the premises on which the plans of the Pakistan delegation were based. The Indian delegation informed the meeting that it was unable to respond to the Pakistan delegation by presenting a similarly comprehensive plan, until a basis for agreement was reached. The meetings were adjour-

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ned. Subsequently, on 28 March the Commission received the Government of India's own views (annex 16)."

What is said in the statement of the Foreign Minister of Pakistan is that the Government of India did not submit its views; the Government of India refused to honour this agreement. But I will read out again what the Commission said: "...the Commission received the first concrete indication of the manner in which one of the parties..." The Pakistan delegation held such and such a view, and as we pointed out before in our statement, the Commission had already rejected both the (*a*) and (*b*) proposals of Pakistan. Now the principle which the Commission had rejected, that was brought before the Commission. The Government of India reiterated its position. What is more, the Commission goes on to say that "on 28 March the Commission received the Government of India's own views". So both parts of that statement are inacurate.

The next allegation is as follows:

"(2) After many months of effort, the United Nations Commission came to the conclusion that India was not prepared to withdraw the bulk of its forces from Kashmir and was seeking to cover this refusal by misinterpreting the Commission's resolutions on the subject. The Commission, therefore, proposed that the difference arising from the interpretation of the two resolutions—which constitute the international agreement on Kashmir—should be submitted to the arbitration of Admiral Nimitz, the designated Plebiscite Administrator. This proposal was endorsed by a personal appeal from President Truman of the United States and Mr. Attlee, the then Prime Minister of the United Kingdom, in August 1949. Pakistan accepted this proposal: India rejected it." (761st meeting, para, 49).

Apart from the statement in regard to arbitration, there are two definite allegations here that the Government of India misinterpreted the resolutions of the Commission.

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What are the facts? It is true that India rejected the proposal for arbitration that was made by the Commission at that time. And may I say, this was not a question of general arbitration; it was arbitration on the topic which we are talking about, and these were the reasons which should have been set out. The arbitrator in this particular case was to have the authority not only to arbitrate on the issue given to him, but also, if necessary, to determine the points on which he should arbitrate. I ask representatives on the Council to show me one instance in the whole law of arbitration where the arbitrator is asked to say what he is going to arbitrate on. That strikes at the root of all arbitration. Arbitration is usually the appointment of a tribunal, to whom a case is referred with a request to give an award or find a reconciliation between two points of view. In this case the arbitrator was asked to arbitrate on whatever he was going to arbitrate on. That is to say, he would be the plaintiff and the judge. This was a novel procedure and without precedent, and could hardly be justified; and I ask anyone to show me an instance in the whole international arbitration procedure where this has been done.

The main difference between India and Pakistan in this particular matter of arbitration was on the disbanding and disarming of the "Azad" forces—forces which Pakistan had all along denied were there. There was Pakistan participation; it did not communicate with the Security Council. The Security Council was happily passing resolutions in total ignorance of what was going on, the information having been withheld, and later, when this matter came up, the Commission gave assurances to us. Mr. Lozano, who was Chairman of the Commission at that time, wrote a letter on behalf of the Commission, which I read out yesterday. The main difference of opinion between India and Pakistan was on the disbanding of the "Azad" forces, because we did not think that a plebiscite could be held, nor could we agree to the idea of an insurgent government being recognized; and certainly it cannot be the idea of the Security Council—as it seems to be the plan going around—that the Security Council is going to stand behind some sort of insurgent authority. The Commission had given us the assurance that there was to be large-scale disbanding

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and disarming of these forces and it was on the basis of this assurance that India had accepted the resolution of 5 January 1949. This was, therefore, not a matter for arbitration but for affirmative or immediate decision.

This issue, on which there had been agreement between the Government of India and the Commission, formed the basis of the plan; otherwise we would not have accepted the plan. Before we accepted the plan, we had got this assurance from the Commission that there would be large-scale disbanding and disarmament. We said our position was that we would not be prepared to arbitrate on anything outside the agreed issues; otherwise, what was being asked was that the assurances given, the commitments undertaken on the basis of those assurances, would go by the board. I ask the Security Council whether any other action could have been taken by a responsible Government.

All the facts at that time were known to the Commission. The Commission had come to the conclusion that the presence of these forces constituted a material change. They have said many times in the report that this was what was standing in the way, and the whole problem had changed on account of the introduction of these forces from Pakistan and the organization of this enormous "Azad" army of thirty-two battalions. There was really no genuine dispute, but what we are asked to do it to go to another issue altogether, to strike at the root of the agreement.

The withdrawal of the bulk of the Indian forces referred to in part II, section B, paragraph 1 of the resolution of 13 August 1948 was to be agreed between the Government of India and the Commission or its successor. That, as I read out yesterday (763rd meeting, para. 35), is one of the articles of the agreement. The withdrawal of Indian forces has nothing to do with the Government of Pakistan. In fact, Sir Mohammed Zafrullah Khan asked that he should be informed as to the plan of this withdrawal. That is to say, our military operations should be disclosed to him. The Commission rejected the idea wholesale. Therefore, it was said that this was a matter for the Government of India and the Commission or its

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successor. That was the position, and the reason, of course, was twofold. In the first place, India was responsible for the security of this State whose sovereignty had not been questioned. The Commission had said time that after time it could not recognize any other authority.

The forces considered necessary to retain on the Indian side of the cease-fire line had to be sufficient not only for the observance of law and order, but, in accordance with assurances given to us by the Commission, also for the security of the State. Therefore, that was not a matter for arbitration. It had to be agreed upon between the Government of India and the Commission. That is to say, in the background of this resolution and the assurances, there were certain things which were outside discussion, namely, that this quantum of forces, and everything else were to be decided between the Government of India and the Commission. How can that go to arbitration?

Under paragraph 4 (a) of the resolution of 5 January 1949, the final disposal of Indian and State armed forces—and I said yesterday that the word "disposal" has been interpreted by India as "disposition"—which was to be with due regard to the security of the State and the freedom of the plebiscite, was to be determined by the Commission or its successor and the Plebiscite Administrator, on the one hand, and the Government of India, on the other. There, again, there was no room for an outside body. This was a bilateral arrangement between the Government of India, as the sovereign authority responsible for security, and the Commission.

If arbitration was to be according to the resolution of the Commission, which is all we accepted, Pakistan could not be a party to those arrangements—I laid strees on this yesterday: the Commission agreed that Pakistan had nothing to do with them and had no right to be consulted at all. It was not a matter for us to decide with Pakistan.

For similar reasons, India objected to the Security Council resolution of 30 March 1951 (S/2017/Rev. 1), which gave Pakistan the right to be consulted, even in vital matters affecting the security of Jammu and Kashmir. Further, if

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Pakistan was not in full agreement with India, the point was required to be decided by the arbitrator, in whose selection Pakistan would again have the right to be consulted. That is to say, we were asked to agree to the selection of an arbitrator by the two States in a matter with which it was previously agreed that one party had nothing to do. Thus, the resolut on sought to reopen, in favour of Pakistan, issues that had been settled by the resolution of August 1948. I said yesterday that our position has been that everything that has followed from the Security Council after this resolution can only arise from that because the parent resolution was the basis of the plan, and this was an attempt to undo it, and we were not willing to agree to that. This later resolution sought to give Pakistan a voice in matters which Pakistan, as an invader of the State, had been rightly denied by the Commission. It sought to transfer to arbitration the right to make vital decisions on which the old resolution required India's agreement.

That is the answer to the second allegation. That is to say, it is true that we did not agree to arbitrate, but because we were asked to arbitrate on questions which were not amenable to arbitration, it changed the basis of our agreement.

Let us examine the third point put forward by the representative of Pakistan :

> "In December 1949, the President of the Security Council, General McNaughton, acting as the Councils mediator in this dispute, formulated certain proposals for the demilitarization of the State of Jammu and Kashmir, Pakistan accepted these proposals; India rejected them". (761st meeting, para, 50).

What are the facts here ? General McNaughton tried to place India and Pakistan on an equal level in this dispute against our position from the very beginning, irrespective of what the Security Council may say, has been that this is not a dispute over territory. This is a complaint about aggression, and, irrespective of the assumption that there may be flaws in India's claim that the invader has no rights, General Mc-

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Naughton's proposals tried to treat us as though we were two co-defendants in that matter. What is more, he equated "Azad" Kashmir with the Jammu and Kashmir Government and gave the former also a status in the matter, despite the Commission's definite finding against it. He gave a formal recognition, therefore, to this Government which not even Pakistan recognized at that time. Pakistan did not recognize the "Azad" Government—perhaps for other reasons, but there it is.

These proposals of General McNaughton failed to take account of our respective positions in this dispute and did not preserve the agreements of 13 August 1948 and of 5 January 1949. This only puts before the Security Council the position that I stated yesterday and shows that it was not something that we made up for these meetings. This has been our consistent position all along.

Now we go to point (4) :

> "(4) The Security Council then appointed Sir Owen Dixon and authorized him, in March 1950, to bring about the demilitarization of the State within five months. He formulated the demilitarization proposals in July 1950 and discussed them with the Prime Ministers of India and Pakistan. Pakistan accepted those proposals; India rejected them." (762st meeting, para. 51.)

First let me say, by way of introduction to this particular point, that the whole of the proceedings after 5 January 1949 are not concerned with the whole issue. They are only concerned with part II, to bring about demilitarization—nothing else. It is a very small compass.

Sir Owen Dixon, now Chief Justice of Australia, went to India and to Kashmir and to Pakistan and he tried to establish, in the same way as General McNaughton did, a parity between India and Pakistan. What is more, he also brought in "Azad" Kashmir as though it were a de jure Government, and he also tried to establish parity between the State forces and militia on the one hand, and "Azad" forces on the other.

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It is not correct to say in this connexion that we rejected Sir Owen Dixon's proposals. Sir Owen Dixon's proposals are interesting in this connexion. He came to two or three important conclusions, not that we accept them, but the Security Council should know about them. One conclusion he came to was that a wholesale plebiscite was neither desirable nor possible. So he suggested alternative plans for what has been called a compartmental plebiscite. At that time—and I want to say now that the Government of India is making no fresh commitment in this matter—we said we were prepared to look at it. We said at that time that we were prepared to examine this proposal, that is to say, to take a plebiscite over the different areas or perhaps agree that some parts had to go to India and other parts had to go to Pakistan. At that time we were certainly prepared to examine those proposals. It was not India that rejected them. Pakistan rejected them wholesale. That is the record.

However, there is something else that Sir Owen Dixon said. I referred to it yesterday and I shall refer to it again. That is that when Pakistan crossed the boundary it violated international law—a polite way of saying that it invaded another country.

Now I go to points (5), (6) and (7) put forward by the representative of Pakistan. I shall take all these together for your convenience, Mr. President, and the convenience of the Council, because they all deal with the same proposition.

I should like to restate that there was no question of this Kashmir question being on the agenda of the Commonwealth Conference of Prime Ministers. The Government of India has objected and will continue to object to the discussion of this problem in any international forum other than the Security Council, which is seized of it. There has been participation by the United Kingdom, the United States, Pakistan, France, Iraq, the Philippines and various other countries in attempts to raise this matter, in however superficial a way, in other forums, and we have on each occasion protested to each Government and said that it was the wrong action to take. We continue to do so, irrespective of the responses they make.

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It would be very wrong for me simply to say that there was no Prime Minister's meeting dealing with this, or that no formal objection was made. There were conversations in 1951 —I believe it was the second conference after India decided to become a republic. There were talks with Mr. Menzies, the Prime Minister of Australia. I believe that there were talks before with the late Mr. Mackenzie King. There were always talks on large numbers of subjects; some of them had nothing to do with this matter at all. There was also an occasion when Mr. Menzies and Mr. Attlee sat together with the Prime Minister of India for a private conversation, and Mr. Liaquat Ali Khan, the Prime Minister of Pakistan, was also present.

In view of the delicate nature of Commonwealth relations and the bringing in of the names of these Prime Ministers, and for various other reasons, which will become more apparent when I read this resolution—and if I can claim the attention of the representative of the United Kingdom—I should like to read this note recorded at that time by the Prime Minister of India :

> "This evening I attended an informal conference about the Kashmir question. This was originally fixed to be held at 10 Downing Street, but owing to Mr. Menzies' illness, it was decided to hold it in Mr. Menzies' room at the Savoy. We met at 8.30 P.M.. The Prime Ministers of the United Kingdom, Canada, Australia, New Zealand, Ceylon and Pakistan were present. We discussed the matter for about an hour."

I might recall here that the reason for having this informal meeting was that we had refused to have the matter discussed formally in the Prime Ministers' Conference.

> "Mr. Menzies and Mr. Attlee made some preliminary remarks about the extreme desirability of the Kashmir issue being settled, more especially because of the world situation. They referred to a plebiscite having been agreed to and only the conditions relating thereto being

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subject to dispute. Mr. Menzies expressed his opinion that probably a limited plebiscite would be more desirable. He added that, as there were legitimate apprehensions in the mind of India in regard to the security of the State, it should be easily possible for a brigade or so of Commonwealth troops to be placed there for security reasons till the plebiscite ended. Australia would be glad to provide such troops as it was thought it would be a service rendered to the cause of world peace. Some reference was also made to the heavy expenditure on the defence of India and Pakistan."

Then my Prime Minister gave his reply.

"Mr. Attlee then turned to me. I said I was at least equally desirous of a settlement of the Kashmir question. This was to the advantage of both India and Pakistan, and we had made many attempts but thus far without success. They show obviously that it was not quite so simple as it appeared on the surface, or otherwise it would have been settled long ago. No doubt it will be settled sooner or later. I gave a very brief account of some of the difficulties and points that had arisen, and added that two aspects were prominently before me. One was that no steps should be taken which might lead to an upsetting of the somewhat unstable equilibrium that had been gradually established between India and Pakistan during these past few years.

"There was a grave danger that if a wrong step was taken it would rouse passions all over India and Pakistan and raise new issues of vital importance. That would be a tragedy.

"The second point was that I could not deal with any proposal without reference to my colleagues in Delhi and Kashmir. So far as the Government of India was concerned, we had gone there on the invitation of not only the legally constituted Government but also the largest

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popular party. Our responsibility was confined to defence, foreign affairs and communications. For the rest, the State Government was responsible, and we could not interfere with its discretion though we could advise them. It was neither possible nor advisable for us to come to a decision without the concurrence of the State Government."—This was in the early stages of our accession. The relations had not yet been built up.—"Then the Prime Minister of Pakistan said that the State Government was just made up of puppets appointed by me, and I could remove them or change them at any time. I took exception to this and told them something about the background of Kashmir and the national conference and Sheikh Abdullah.

"I had given a very brief resume of the events at Kashmir in the last few years, finishing up with Dixon and the proposals. I pointed out that Dixon had concluded that an over-all plebiscite was not feasible and had therefore explored the possibility of a partial plebiscite. To the general principle of this I had agreed, subject, of course, to the other matters connected with it being considered and decided upon.

"I made it clear that there was no point in discussing these matters until the principle was accepted by Pakistan" —because at that time, in the discussion with Mr. Menzies, this agreement was to be given by Pakistan and not by us, because we had agreed, subject to details, to the principle that Sir Owen Dixon had put forward.

"Mr. Liaquat Ali Khan indignantly repudiated this. The Prime Minister of Pakistan thereupon said there was no question of an over-all plebiscite not being feasible. There might be some difficulties, but obviously it could be done. I agreed that it could be done, though it might take time.

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"The question of feasibility did not refer to the practical difficulty of having an electral roll, but, according to Dixon, to various other factors," which are set out in the Dixon report and some of which are referred to briefly in these conversations—"Mr. Menzies stated that he had not been able to understand why the Government of the State"—this is important because it comes from Mr. Menzies—"should be pushed asiae or suspended because of the plebiscite"—and here I would point out that was exactly what Pakistan was pressing for.—"It could very well continue, although matters connected with the plebiscite might be handed over to the Plebiscite Administrator. Attlee agreed with this."

Now, the Government of India, I would recall, has raised no objections in this connexion—provided other conditions are satisfied.

The conversation among the Prime Ministers then touched on the ethnic and linguistic division of the State. I quote from the conversations :

"I told them, also, that that there was basic difference between our approach and Pakistan's to the two-nation theory, and the insistence on religious differences coming into politics. While we had reluctantly accepted certain facts, we never accepted Pakistan's theory, and we were not prepared to apply it to Kashmir in any event."—And here the reference is to the theory of a Muslim State and a Hindu State—"That would be bad for Kashmir, but would be worse still for India and for Pakistan. It would go counter to the principles that governed us and might produce upheavals both in India in Pakistan. We had only recently witnessed an upheaval of this kind in Bengal, which had with difficulty been controlled by the Agreement between the two Prime Ministers.

"Mr. Attlee pointed out rather warmly that past history

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did not quite fit in with what I had said. The division of India had largely been based on a religious basis. He did not like this religious basis at all, and he had tried to avoid it, but facts were too strong. Further, he said that ethnic and linguistic divisions were equally dangerous, and we in India were having to face this difficulty in various parts of the country. I said that we were not enamoured of ethnic and linguistic divisions, but, in the circumstances, we certainly thought that any religious approach to a political problem was dangerous and explosive. We had never accepted that principle, and we did not propose to do so in the future. Right from the beginning of the Kashmir trouble, we had laid stress on this fact and had informed the United Nations Commission repeatedly that this appeal to religion must be avoided. In spite of this, the Pakistan Press was full of religious appeals and calls for 'jehad' "—that is holy war.

"If this kind of thing was going to take place before and during the plebiscite period, then there would be no plebiscite, but civil upheaval, not only in Kashmir but all over India and Pakistan.

"Mr. Menzies then said that he quite agreed that religion should be kept out of the picture, and he had been much disturbed when he saw the Pakistan Press in Karachi"—and this is Mr. Menzies speaking, not the Government of India—"which was writing most irresponsibly on this subject...

"The Prime Minister of Ceylon was silent throughout. Mr. Attlee then referred to river waters in connexion with Kashmir and mentioned the international committee set up by Canada and the United States. I mentioned that Mr. Saint-Laurent had drawn our attention to this last year, and I had stated subsequently that I would be perfectly agreeable to having subsequent consideration of the water problem as between India and Pakistan."

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The delegation of Pakistan has not raised this objection during this series of meetings of the Security Council, but, had it done so, we should have had the answers.

I continue to quote from the conversations of the Prime Ministers :

> "The Prime Minister of Pakistan at one stage referred to ethnic divisions of Kashmir and said that, if necessary, a plebiscite could be held separately in these areas. At no time, however, did he accept the idea of a partial plebiscite. He insisted on an over-all plebiscite for the State, though this might be taken separately in different areas—presumably to allow these areas to decide for themselves.
>
> "As Mr. Menzies was not feeling too well and had a temperature, the conversations ended rather suddenly at about 10 p.m. Mr. Menzies concluded by saying that we might perhaps think over the various suggestions made in the course of the conversations. These were, according to him, that, firstly, the State Government should not be touched."—now, this is Mr. Menzies' opinion—" and should continue except in regard to functions relating to the plebiscite; secondly, the Commonwealth might pro vide a security force; and, thirdly, the plebiscite might be held in different areas.
>
> "In the course of the conversations, no reference was made either by Mr. Liaquat Ali Khan or by me to the proposal about a Commonwealth force being sent. There was no mention of these talks being resumed."

I am sorry to have had to read out this long document. However, we have other matters to consider in relation to the countries involved—particularly in relation to Australia, which, though separated from India by miles of sea, is a very close neighbour of ours; in fact, we hope, as time goes on, to establish even closer relations with Australia than we now have. That is why I have read out this document.

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The PRESIDENT : I call on the United Kingdom representative on a point of order.

Sir Pierson DIXON (United Kingdom) : I am sorry to interrupt the representative of India, but I should like to make this brief observation.

Of course, I fully recognize that, since the representative of Pakistan has made an allusion to the discussions among the Commonwealth Prime Ministers, the representative of India naturally wishes to say something in that respect. I should, however, like to put this consideration to him, through the President. Of course, Mr. Menon is perfectly free to do what he likes in this respect, but, in view of the particularly intimate nature of these discussions among the Commonwealth Prime Ministers, I wonder whether it is desirable to give this textual account which he has been giving.

I say this simply with the object in mind of preserving what is a rather special and particular institutional intitution which the three representatives of Commonwealth countries seated round this table value greatly, I know. The representative of Pakistan made an allusion to these discussions. It seems to me that a summary is quite different from a textual account.

I have raised this point of order merely as a domestic concern of the three representatives of Commonwealth countries seated at the Security Council table.

Mr. WALKER (Australia) : I should like briefly to associate myself with the remarks made by the representative of the United Kingdom and to endorse his suggestion that it might be preferable if we did not follow the practice here of going into private conversations. I would just emphasize the fact that Mr. Menon read from his own Prime Minister's account of the private meetings. It has not been the practice in the past to publicize such private conversations. Of course, I recognize right of the representative of India to bring before the Security Council any material which is at his disposal.

The PRESIDENT : The position of the Chair on the point of order raised is clear. On matters mentioned by

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representatives before this Council, if they are not insulting or libellous, the Chair cannot make any ruling. However, the representatives of the United Kingdom and of Australia have made an appeal to the representative of India, and I refer that appeal to him.

Sir Pierson DIXON (United Kingdom): I think that I may have spoken of three members of the Commonwealth; of course, I meant four.

Mr. Krishna MENON (India): I do not intend to take seriously Sir Pierson Dixon's forgetting one member, the subconscious mind projecting itself. I am prepared to leave it at that.

I must say that this intervention by the representatives of Australia and the United Kingdom is most extraordinary at this stage of the discussion. I can only conclude that, because of the general fatigue caused by listening to me, they could not have heard the point I raised with you, Mr. President. That would have been the time for the representatives of the United Kingdom and Australia to have said that they agreed with the representative of India that these matters should not be aired here, so let the representative of Pakistan, who has circulated these allegations all over the world, formally withdraw them. I am surprised beyond measure to see a diplomat of the experience of Sir Pierson Dixon telling me that when charges of dishonesty, charges of a serious character such as breaking an agreement and of not trying to honour the second part of this agreement, are categorically made in the statement of the representative of Pakistan, I should not reply to them.

I presumed that the representatives of Australia and of the United Kingdom would have read the statement of the representative of Pakistan. What does it say? At the end of point (5) it is stated "India rejected it" (761st meeting, para. 52). At the end of point (6) it is stated "Pakistan accepted this proposal: India rejected it" (*ibid.*, para. 53). At the end of point (7) it is stated "Pakistan accepted this: India once more rejected it" (*ibid.*, para. 54). The somethings is repeated all the time. These are definite allegations which reflect upon

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my Government and upon the Prime Minister of India, who participated in these conversations. I was entitled to read them, and my responsibility lies only with my Government.

Secondly, I should like to say here that I yield to no one in my desire to maintain Commonwealth relations, and I suppose that in my time I have contributed as much to this as anyone else at this table. I deeply regret that Sir Pierson Dixon did not raise his objection before, and I resent the observation of the representative of Australia that the account I was reading was my Prime Minister's account thereby implying that it is not to be trusted. That may well be, but there is a different way of putting it. In that case, since the matter is now in court, let the Prime minister of Australia come here and say what happened.

The time for this point of order was earlier than now, but even at this time I am prepared to have it taken out of the record, provided that the representative of Pakistan takes points (5), (6) and (7)of his statement out of the record of the 761st meeting. Why does this extreme sensitivity arise in regard to us? Why did not the representative of the United Kingdom, as the senior member of the Commonwealth, Jump up and say to the representative of Pakistan. "It is not right of you, who are so close to us, tied to us with military alliances, and whom we have always supported. Why don't you withdraw this, since it is not decent to refer to private conversations."

Am I to sit here and hear my Government challenged, and not use the material at my disposal? I went out of my way when I came here this morning to try your patience, Mr. President, by asking you to deal with this matter, and I think it is entirely wrong that an attempt should be made to convey the impression that we are behaving in a way that is inconsistent with all the nice things that the representative of the United kingdom said. One way to preserve Commonwealth relations is to appreciate that it is a two-way relationship.

Sir Pierson DIXON (United Kingdom) : In view of what my colleague from India has said, I must make it clear that all I appealed to him to do was not to read out the textual

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account of these private conversations. I did not suggest that he should make no allusion to them, because my colleague from Pakistan has already made that allusion. As I said when I raised this point, my colleague from India will wish to make a reply. The only point I was making, and I had hoped it was clear to the Council and to my colleague from India, was to suggest to him the undesirability of reading out a textual account which, as we have heard, contains a lot of quite intimate remarks about peoples' health and that kind of thing. It does not seem to me that it is conducive to the development of this discussion to do it in that way, and I should have thought that was a perfectly reasonable point.

With regard to the time when I should have raised that point, that surely is entirely within my discretion. I must say that it never occurred to me that Mr. Menon would in fact read out actual textual accounts. Had I thought that, I might have raised the point when Mr. Menon asked for a ruling.

Mr. WALKER (Australia): I said that I thought that the representative of India was at liberty to use any material and information at his disposal. In my concluding remarks, I only intervened in support of my colleague, Sir pierson Dixon, to reinforce his appeal that detailed records of these private conversations should not be read out here if that could be avoided. I think that Mr. Menon misunderstood my remark that the record from which he read was his own Prime Minister's record. At private conversations the various participants normally keep their own records, and is certainly not my intention to introduce any such competing material or to make any suggestions at all regarding the accuracy of the record kept by the Prime Minister of India. I just did note that the document being read from was not an official report of the conference but just a private record.

The PRESIDENT: While it is interesting to listen to this British Commonwealth family discussion, an appeal has been made to the representative of India, and the representative of India may proceed.

Mr. Krishna MENON (India): With great respect, I

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submit that this is not a "family discussion". It is a point of order raised in connexion with the proceedings of the Security Council. If, in the exercise of your office as President, you at any time call me to order I will obey you. But I am not going to be pushed into the position of not stating the position of my Government. I look around this table and I know that I have got to fight my battles. We will see more about it in the subsequent meetings. The record is there.

I stated categorically and very plainly that I was going to read the notes of these discussions and that is in the record. Therefore, there can be no reason for Sir Pierson Dixon to tell the Council that he might have raised the point if he had known or if he had thought that this was an intimate discussion and that this, that, the other and something else was going to happen. I do not think that is correct.

In what position is the representative of the Government of India ? Certain allegations are made about a private conversation by one party, a conversation at which I was not present. Would the Council have been satisfied if I simply had said that points (5), (6) and (7) of the statement made at the 761st meeting are inaccurate or if I had given an incorrect narration of it ? When the representative of Australia tells me : "That is your Prime Minister's record", he should have told me: "That is your version of what your Prime Minister's record is". That would be another step removed. Therefore, I had no option.

At the same time, if I am allowed to, I will make an appeal to Sir Pierson Dixon to exercise some degree of fair play in dealing with different members of the Commonwealth —at least in public. As an earnest of my intentions, I am prepared to agree, if the President agrees, that in the written record matters which are not relevant to points (5), (6) and (7) may be excluded. The only reason I read everything out was that I did not want it to be said afterwards that I was selecting extracts. Therefore, as I said, I do hope that the representative of the United Kingdom will be able to follow the practice that has obtained in the past of at least in public exercising some degree of fair play as between two members of what the Presi-

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dent calls "the family". The objection should have come several days ago when points (5), (6) and (7) were read out. I should have objected then, but I did not want to interrupt because the President would have called me to order as I am not a members of the Security Council. I therefore say as an earnest thereof that I am prepared to have a summary inserted in the official records, only if the President agrees with us that it is a correct summary of what I said here, a summary of the contradictions or the untrue allegations that are made in points (5), (6) and (7).

I think that in the position we find ourselves here, it is necessary for me to substantiate every statement I make from the record. It may be boring, but then we have suffered in the past in this discussion by trusting too much to the good sense of everybody all around. We therefore propose to state our case in such a way that at least posterity will know where the truth is. Therefore, this is my response to the appeal of Sir Pierson Dixon. I do not expect any response in return. Not that it would not come, but I do not expect it.

Is that agreeable to the President ?

The President : Yes.

Mr. Krishna Menon (India) : Now we come to point (5) of the statement of the representative of Pakistan (761st meeting, para. 55), which refers to some mediation or some endeavour by the then President of the Security Council, Mr. Muniz. This is the same point about arbitration, so I do not want to repeat the argument which I have given. Point (9) also relates to the same thing.

Point (10) (Ibid., para, 57) relates to the intervention of Mr. Frank P. Graham, the United Nations Representative, stating that he "put forward a number of proposals on the subject of the demilitarization". It states that "each one of these was accepted by Pakistan, but rejected by India". Now, there can be no objection to going into the facts of this case because Mr. Graham is not a member of the Commonwealth.

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The full position in regard to point (10) is that India also accepted the proposals and not, as was said here, that India rejected them. India accepted the proposal that demilitarization should be a single and continuous process. That is the first denial. The second is Pakistan's assertion that it accepted without exception all demilitarization proposals which were rejected by India; that is not correct.

Mr. Graham suggested in his proposals of 4 September 1952 (S/2783 and Corr. 1, annex 8) the following criteria for fixing the quantum of military forces on each side of the cease-fire line, the actual figures to be decided at a conference of civil and military representatives of the two Governments. On the Pakistan side of the cease-fire line a minimum number of forces are required "for the maintenance of law and order and of the cease-fire agreement, with due regard to the freedom of the plebiscite". That is Mr. Graham's proposal. On the Indian side a minimum number of forces are required "for the maintenance of law and order and of the cease-fire agreement, with due regard to the security of the State and the freedom of the plebiscite". India considered that these principles—and this is where the contradiction comes in, the contradiction to the Pakistan allegation—were conceived in the right spirit and as a basis for the evolution of a suitable definition of functions of the forces on both sides of the cease-fire line. India considered that the principles contained the germ of a settlement but despite several efforts to evolve a suitable draft in terms of the language used in the Commission's resolution, no understanding could be reached with the Pakistan Government. Point (10) says it was accepted by Pakistan and rejected by India; the facts are exactly the reverse.

During the informal discussions between India and Pakistan in December 1953, the Indian Committee suggested that after the withdrawal of the Pakistan Army, the disarmament of the "Azad" forces which, as will be remembered, was part of the assurances, and the withdrawal of the bulk of the Indian forces, there should remain 21,000 Indian troops in addition to the State militia on the Indian side and a civil armed force of 6,000 men on the "Azad" side, half "Azad"

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half non-"Azad", all of them armed, if necessary. The Indian side therefore made some concessions in this matter: first, a substantial increase in the civil armed forces on the Pakistan side, which was totally against the assurances that had been given to us, from the 4,000 originally proposed to 6,000; secondly, the readiness to come to a satisfactory solution about the ratio between the armed and unarmed forces, as well as the type of equipment to be supplied and even to the extent of all the civil force being armed, if necessary—previously India had insisted that half of the force should be armed and the other half unarmed; thirdly, acceptance of the Pakistan point of view abaut the security of the northern areas and the consequent need for the retention of their scouts, that is to say, as a matter of compromise although it no longer binds us—and I want that to go into the record—we even agreed that in the places which these people have militarily occupied we were prepared to recognize the existence of the scouts which were established, as I shall point out later, under the British administration and who surrendered this territory without anybody's authority. In spite of these concessions, Pakistan did not accept these proposals. I ask whether that corresponds to the allegations made in the paragraph referred to.

Point (11) deals with the resolution adopted by the Security Council at its 611th meeting, urging:

> "...the Governments of India and Pakistan to enter into immediate negotiations under the auspices of the United Nations Representative for India and Pakistan in order to reach agreement on the specific number of forces to remain on each side of the cease-fire line at the end of the period of demilitarization, this number to be between 3,000 and 6,000 armed forces remaining on the Pakistan side of the cease-fire line and between 12,000 and 18,000 armed forces remaining on the Indian side of the cease-fire line." (761st meeting, para. 58).

Our annwer to this is that while the Government of India could not accept a resolution which suggested a number of forces which in India's view was insufficient for security, the

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Government of India did enter into further negotiations with Mr. Graham. It is only normal to suggest that the Government of India must be the judge of what forces are required for the security of the forces themselves in this very large area. There was no question of total rejection at that time; we did enter into negotiations with Mr. Graham afterwards.

That concludes the comments with regard to the allegations made. It will therefore be seen that out of these eleven statements made, every one of them is incorrect. In the majority of them, the position is exactly the reverse. And if arguing a case before this body has any value on the decisions it makes or any impact on the Governments represented here; I beg to submit that this refutation, with chapter and verse from the documents, must be regarded as an important item.

Therefore, the charges of non-performance, in my submission, are wrongly laid at our door. On the other hand, while we are not responsible for the conditions of non-performance, as I have already pointed out, we went a long way, even departing from the assurances we had received, even allowing these rebel and Pakistani forces on the other side to be armed, and virtually taking into account the position that time had passed and some crystalization had taken place. All that went by the board. Therefore, it is not as though we did not try very hard, it is not as though we did not meet Mr. Graham or Sir Owen Dixon, or any of these people, or as though the Commonwealth Prime Ministers agreed with the view of the Pakistanis.

At this stage, especially in view of the intervention of the representative of Australia, I will take the liberty of reading paragraph 21 of Sir Owen Dixon's report to the Security Council which is an important paragraph. And if the Security Council decides, and I hope it will, that the primary concern is obedience to the Charter and the sanctity of the provisions of the Charter with regard to territories, then it will pay heed to this. This paragraph states :

> "Upon a number of occasions in the course of the period beginning with the reference on 1 January 1948 of the

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Kashmir dispute to the Security Council, India had advanced not only the contention to which I have already referred that Pakistan was an aggressor, but the further contention that this should be declared. The Prime Minister of India, at an early stage of the meeting"—that is, the meeting with Sir Owen Dixon—"made the same contention and he referred to it repeatedly during the conference. I took up the positions, first that the Security Council had not made such a declaration; secondly that I had neither been commissioned to make nor had I made any judicial investigation of the issue; but thirdly that, without going into the causes or reasons why it happened, which presumably formed part of the history of the sub-continent, I was prepared to adopt the view that when the frontier of the State of Jammu and Kashmir was crossed, on I believe 20 October 1947, by hostile elements, it was contrary to international law, and that when, in May 1948, as I believe, units of the regular Pakistan forces moved into the territory of the State, that too was inconsistent with international law." [S/1791, para, 21.]

We have not held back anything that is used against us. But this was the finding of one of the investigators who, on balance, was not favourable to the Indian position and had a considerable number of reservations. But on this issue, with his judicial training and with the facts before him—and every lawyer knows that whatever may be the right of the occupant, no trespasser has a right to priority—he said that. So here is a categorical statement in a report of the United Nations Representative that there was an aggression.

Therefore, we say that, even assuming for argument's sake—which I do not assume and I do not ask the Security Council to accept—that India has not been forthcoming in all these matters, the primary question remains that Pakistan came here as an invader; it trespassed into territory which was not its own; it tried to change the situation by force of arms—we did not obtain accession by force of arms—it tried to unite

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Kashmir with its country by force of arms and, what is more, the worst part of it was that it did not keep the Security Council informed about it and kept the information away from the Security Council not only once but continually, and this has been repeatedly referred to in the report of the Commission.

Another condition that the Commission laid down—and as I said before, it was obsessed by this conception of the cease-fire when this agreement was concluded—was that it was realized that it was necessary to create an atmosphere of settlement. The statements of Pakistani Ministers are included in annex II of my statement [S/PV. 762 Add. 1. annex II]. I want to say that this document is not up to date or even complete. A great amount of vitriolic abuse has been showered on our country and our statesmen by name, some of which is unprintable and some of which I would like to read out later. There is so much that I can give you only samples.

That is, in our opinion, a serious condition that has seriously affected the non-emplementation. That is to say, it is not possible to agree to open ont one's country to the entry of other people during a plebiscite period or to throw the whole of the established conditions into an unsettled state when, on the other side, there is always this campaign of war. Some of these statements, which I do not propose to read out, are by members of the Legislative Assembly. The Pakistan Government may say that they are not by the Government—but they are Government statements. There is the press of Karachi, and papers founded by Mr. Jinnah himself, and statements of their own ministers.

For example, there is a statement by Sardar Abdur Rab Nishtar, who was at one time in charge of Kashmir affairs and was the Governor of West Punjab—not an irresponsible person. This is what he said :

> "Mr. Nehru understands only the language of force. We will have to exhibit our strength if we want to take Kashmir."

Another statement :

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"We would not mind being cut into pieces but will certainly conquer Kashmir." [S/PV. 762/ Add. 1, annex II, sect. 1].

These are the people who accepted the agreement.

Then there is this statement by the Chief Minister of the North West Frontier Province, from whose territory these raiders came in the beginning :

"You can take it from us that the day we become desperate and lose all hopes of a just solution of the problem, not only the entire Pathan population of Pakistan and the tribal areas will rise up for the holy 'Jehad' in Kashmir, but our brothers from across the Afghan frontier will also throw in their lot with us for the cause." [*Ibid.*].

That is an invitation to another country for a military attack upon our own people.

The Governor of West Punjab, Sardar Abdur Rab Nishtar, also made this statement :

"So long as a single Pakistani is alive, nobody dare snatch Kashmir from Pakistan by force···If the problem is not settled immediately, the whole of Asia would be engulfed in the flame of war which might lead to a world conflagration." (*Ibid.*)

The "Times of Karachi" of 16 August 1956 contains the following report of a statement made by Chaudri Mohammed Ali, who was then Prime Minister of Pakistan and who is, I believe, coming to Washington shortly as Ambassador :

"I am ready for the liberation of Kashmir', he said, and added, 'but I want the people to get ready .' The freedom of Pakistan would not be complete without Kashmir, he asserted, and exhorted the people to acquire the spirit of unity, faith and discipline···He said the

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> Kashmir dispute was now going before the Security Council,"—that refers to this meeting—"but asserted that the nation would not rest there." [*Ibid.*]

That statement was by the Prime Minister, by a man who is reputed to be a man of extreme moderation in language. We are told in his statement that this reference to the Security Council is only preliminary to other action. That is what the Foreign Minister of Pakistan told us the other day—and I shall refer to that later. That is to say, the Security Council is to be given a chance—but, if necessary, "we will do something else".

It would be taxing to the Council if I were to read a great deal of this material. Some of it, as I have said, is from the newspapers, and any Government can say: "We have a free press and they can print what they like", though it may not correspond with the facts that obtain in a particular place.

The Chief Minister of West Punjab had this compliment to pay to the Security Council:

> "If the United Nations proves to be a band of thieves"—that is all of us—"we will have nothing to do with it. We will prove that we can liberate Kashmir with the strength of our arms." [*Ibid.*]

In this particular matter, it is also to be noted that even foreign observers who are not friendly to India in their comments on these matters, such as magazines published in the United States, have pointed out that the whole conception of the State of Pakistan in regard to its alliances is to attack India.

Here is Mr. Falk, of Chicago, in "Newsweek"

> "Pakistan is taking the United States for a ride. This is evident from your report and from my observations in that country, where I worked until recently. Pakistan

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thinks it did us a favour by joining SEATO and the Baghdad Pact. They do not worry about the danger of Russian aggression. Pakistani leaders merely humour our concern about Communist expansion in order to get economic and military 'Bakshish' and to strengthen their hand against India." [*Ibid.*, sect. 2].

And here is Mr. A.T. Steels, writing in "The New York Herald Tribune" :

"The average Pakistani thinks very little about the Communist threat if he thinks of it at all. His hostility is toward India rather than the Soviet Union. And he assumes that in the event of a show-down with India. the American military supplies will be drawn upon." [*Ibid.*]

In regard to these last two statements, I want to say that our quoting from them has no reference whatsoever—and I want to say this categorically—to the intentions of the United States in regard to this matter. We are talking only about Pakistan opinion.

I will put these statements aside now. One could read all of them—and I hope the members of the Council will. They do not make very pleasant reading, but it is reading that is pertinent to the argument that we have put forth.

Then we have the situation involving the whole Constitution of Pakistan itself. That is entirely an internal matter and we have no wish to interfere in it. But insofar as it affects this situation of a State which is heterogeneous in character. where the people who do not belong to the Islamic religion do not have equal rights with the others in certain respects—and if that is challenged I will quote from the Constitution, if it comes to that—, it is not possible for us to take the view that the campaigns that go on are not of this character.

The next point I wish to refer to relates to the various violations that have taken place. And I want to say here and now that my Government does not wish to make a point of

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the normal kind of skirmishes and crossings of the frontier that can take place on a military cease-fire line which represents no natural division but is a line which is reached for convenience, so that the local villagers may not know about it, may go and snatch cattle, and so on. We are not referring to that kind of thing. There have, however, been major incidents. I do not want to burden the Council with a description of a whole set of them. I shall therefore refer to only one—and that is what has been called the Nekowal incident.

Nekowal is a small village on the Indian side of the Jammu-Sialkot border. I refer to this incident because it developed into the proportions of a minor battle. On 7 May 1955, the Pakistan border police—and these police are not just boy scouts in uniform, but armed police—opened fire without warning at an Indian party consisting of Major Badhwar, an officer on loan to the Central Mechanized Farm —he was there not on military duty—nine civilian employees and a small military escort of eight persons who were supervising the ploughing of land at a distance of about 500 yards from the village, on our side. As a result of the firing by the Pakistanis, Major Badhwar and five other ranks and six civilians were killed, and one of the other ranks was wounded, We lost an officer and five men there.

On 8 and 9 May, the United Nations observers conducted a joint investigation at the site of the incident, on a complaint lodged with the United Nations observer's team at Jammu. The observers declared this incident to be a border violation by the Pakistan border police.

Immediately on receipt of the information about this incident, the Government of India lodged an emphatic protest with the Government of Pakistan and, in accordance with the internationally accepted principle for claiming compensation, demanded compensation of the Government of Pakistan, in the amount of 1,200,000 rupees, for the moral and material wrong done to the Government and nationals of India as a result of this incident.

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After a long correspondence in regard to the liability to pay compensation—not with regard to the incident, but with regard to the liability to pay compensation—the Prime Minister of Pakistan wrote as follows on 19 May 1956, and I should like to say that this is not a private letter but one that has been quoted in Parliament :

> "While, for reasons given above, I do not consider that my Government is at all liable to pay any compensation in respect of the Nekowal incident, I am personally conscious of the human suffering involved in an incident where a number of lives have been lost. Having regard to this aspect of this matter, we would be prepared to make an *ex gratia* contribution of one lakh rupees to the rehabilitation of the relatives of those who lost their lives on the Jammu side of the frontier."

The point about this is that we agreed to this *ex gratia* arrangement in order not to exacerbate the situation.

This is only one of the incidents that have taken place—and, by the time the United Nations observers get around to it, the trouble has already occurred.

There have been a considerable number of attempts at probing our frontiers. If I so desired, I could have given you a number of instances. They have taken place not only on the cease-fire line—and I am confining myself to Kashmir—but there have been offensive actions against us on the Indo-Pakistan border. And may I say here that we have few troops on this border. We have armed police at posts. And there have been skirmishes which have resulted in considerable loss of life in one or two instances, in which the army had to be called in.

Therefore, the responsibility for non-performance in regard to the conditions of part II, in regard to the violations of international law, in regard to the campaigns of hatred that go on, and in regard to the non-maintenance of the peaceful-atmosphere, is not on our side.

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There is one other aspect of this item that I want to mention before I leave it, and that has to do with the northern areas. The northern areas are those areas of Chitral, Gilgit and Baltistan—there is a map attached to one of the documents submitted as annexes to my statement—which are very sparesely populated areas and which, to a very considerable extent, even under British occupation, have been left to the people who were there. In this area, first of all, Pakistan—against the resolutions of the United Nations—has annexed territories and incorporated them. What is more, such incorporation had taken place before the resolutions of the United Nations, and the United Nations Commission was not informed about these matters; they came to know about it later.

Now, what happened in regard to this area known as Gilgit, which is strategically very important to India for its defence, where, in the British days, there was a body called Gilgit Scouts under British Command? The territory was handed over to the Maharaja by the British when they left. Therefore, there is no question of this not being part of Kashmir. And the Maharaja sent there Governor, and what was done was that these Scouts, under the Command of Major Brown, arrested the Governor. On 31 October the Gilgit Scouts led by Major Brown and other officers—presumbly of the Pakistan Army—surrounded the Governor's house. He never suspected that these people were going to attack him. There were rifile shots exchanged and one round was fired in the air to frighten them away. But what happened was that they arrested him, put him in prison and handed over the territory. Major Brown made a declaration, or something of that kind, and it was through him that this particular territory went over to Pakistan. The point here is this, that there has not even been a popular rising in this place. The custodians of this area were the Scouts under British Command. The British Government had no responsibility in this matter because after they handed over the territory the Scouts remained as an independent force. But the British personnel handed over this territory and the accession was received from them. Now in view of the time, I propose to make that story very short. The

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Territory is now occupied; it has been incorporated, and there is a considerable army in that area.

The other area to which I want to refer is Chitral. Chitral is mentioned as one of the territories of Pakistan in the Pakistan Constitution. Therefore, it is an outstanding instance of annexation *de facto* and *de jure*. And the Commission has said time after time that there can be no change in the sovereignty. It is sometimes argued that Chitral was not part of Kashmir. But there are the records of the British Government, most of which are in our possession, which show that this area was under the suzerainty of the Maharaja of Kashmir, and all those territories that were under suzerainty were part of the State. Irrespective of the value of Chitral to one side or the other, and whatever may be done in the far future if ever there was an agreement between the two sides, the annexation of this territory, the receiving of accession from a former feudatory to the Maharaja who had no right to do so is a direct piece of annexation.

Then there is the other argument, the final argument, in regard to non-performance, that the whole of the position of Pakistan in regard to the conclusion of the truce, if one were to summarize it briefly and state it in one point, which probably would not be as accurate as it should be, is that they insist on what they call a military balance. That military balance has been rejected by the Commission. I wish to refer the Council to paragraph 2 of annex 12 of the third interim report which says :

> "The Commission, however, cannot accept the interpretation that 'the declared objective of the truce arrangements is described as being the creation of a military balance between the forces on each side'. There can be no other objective of the truce arrangements than to establish peaceful and normal conditions throughout the State such as will be conducive to the organization and holding a plebiscite. Similarly, the process of synchronizing the withdrawal of the Pakistan and Indian forces to be arranged between the respective High Commands and the

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Commission, in effect tends to create a corresponding situation on either side as withdrawal of one and reduction of the other take place, but in no way does this affect the ultimate aims of the resolution of 13 August..."

I will not read the other paragraphs in view of the time, but I would like to refer to paragraphs 203, 204 and 225 in the same report which deals with the same problem; that is, that the Commission has at no time agreed to the idea of military parity or a military balance. If it agreed to a military balance, then it would mean placing these two sides in a position of equality. The position which the Commission held was that it was inconsistent with the sovereignty of Jammu and Kashmir, inconsistent with the terms of reference of the Security Council and, what is more, a condition in which the security of the State could not be maintained.

I shall now deal with the position to which I made some references today in quoting to the Council the international practice in regard to the interpretation of treaties and what are the conditions that should govern. I am not going to repeat that, nor am I going to quote legal doctrine. But there is well established legal doctrine, there are the main supporters of the United States of America and the United Kingdom, which say that the passage of time and the change of circumstances must affect the nature of agreements reached. That is a very common sense proposition. It is not necessary to quote Latin phrases in support of it.

First of all, with regard to this time factor, the Commission, and India, and I presume, if I am not contradicted, Pakistan, expected the operation of part III of the agreements, that is the plebiscite, to be taken in reasonable time. In that background, that the plan was accepted with all its reservations, is it reasonable to expect that matters would stand still in regard to the territory of Kashmir, over which India has active control, in the social, economic or political respects, taking into account the conditions that obtain in India itself? Therefore, considerable changes have taken place—economic, social and communication developments, for example—and all

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these have brought about big changes in the state of affairs. What is more, the disturbance of the existing conditions is calculated to impoverish the people of Kashmir. When I refer to the conditions that prevailed there, under a later heading, it will be clear to the Security Council, if it is disposed to receive the facts and the arguments, that that is the position.

The other change factor I have already referred to, namely, the consolidation of the occupied territory. Time after time it has been said in this report that there should be only local authorities—meaning *de facto* local authorities: there should be no consolidation of territory. Western Kashmir is practically a province of Pakistan, administered by its central Government. It has no local government and, therefore, has become integrated in that way.

The same applies to other areas, directed by the Pakistan Army or the Pakistan Government. Therefore, this consolidation, the factual division of Kashmir that has been made by Pakistan occupation on the other side of the cease-fire line, is a change-condition which makes the operation of part II very difficult.

We want to refer to other changed conditions of vital importance to our country. The Commission noted that there were thirty-two battalions of "Azad" forces on the "Azad" Kashmir side. That does not apply to the northern and extreme northwestern areas, but only to western Kashmir, where there is a population of 500,000, and it is there that there are forty-five battalions today, according to our estimate, And these forces are officered by Pakistan officers and Pakistani-trained officers who go to Pakistan military schools, where there are a large number of commandos organized for guerrilla warfare. These commandos were organized and thrown back into the population. Their number may be only a few hundred—the last time I heard, there were only 800 of them, but that is not an absolute figure. However, they are being trained for guerrilla warfare. This is something affacting the whole conception of the opening of the territory for a plebiscite. It would be imprudent for any country not to take note of these conditions.

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The Commission says in paragraph 203 of its report:

"The resolution of 13 August 1948 recorded one major change in the situation as contemplated by the Security Council during its deliberations in the early part of that year, namely, the presence of Pakistan troops in the State of Jammu and Kashmir. It did not, however, record a second element which has developed subsequently into a serious problem"—this, again, after the Security Council was seized of the situation and after the resolutions asking them not to make changes—"in the implementation of that resolution : The 'Azad' (Free) Kashmir movement, the fighting forces of which today"—that was in 1949—"number some thirty-two well-equipped battalions. This movement, Muslim in character, has become the centre of strong and violent resistance to the accession of the State to India. It controls a considerable part of the western area of the State, it claims to be fully organized as a government and its political activities appear to be directed toward the accession of the State to Pakistan. The Government of India, of course, grants no recognition to the 'Azad' organization and holds, officially at any rate, its existence to be a problem of internal public order. On the other hand, the Government of Pakistan has rendered important assistance to the 'Azad' movement : it has officered the 'Azad' forces with officers of the Pakistan Army. Units of the Pakistan Army itself are present in 'Azad' Kashmir and have operated in the closest co-operation with the local forces. However, Pakistan has not given formal recognition to the 'Azad Kashmir Government'. In a latter dated 6 September 1948 [S/1100, para. 99] Pakistan informed the Commission that it could not make commitments on behalf of the 'Azad' organization. The Commission has never negotiated with its representatives; having no international standing, the organization can have no international responsibility."

The Commission states in paragraph 204 :

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"At the time that the Commission adopted the resolution of 13 August 1948 it had reason to believe that the 'Azad' forces did not constitute a properly organized and equipped military force and that consequently their disposal, once the Pakistan Army had withdrawn from the State, would not constitute a major difficulty."—The Security Council must draw its own inferences as to why the Commission came to the conclusion at that time that it was not a serious factor because the Pakistanis did not inform it.—"In accepting the 13 August resolution, India apparently agreed that these forces could be dealt with after the truce became effective."—Does that sound unreasonable on our part ?—"Four months later, during the conversations which immediately preceded the Commission's resolution of 5 January 1949, the Government of India stressed the importance it attached to the disbanding and disarming of those forces as a condition vital to the holding of a plebiscite. The Commission agreed that a largescale reduction and disarming of the 'Azad' forces should take place. Provision for this was made in the resolution of 5 January as follows..."

Then, the Government of India said, in a communication, that it was prepared to regard this as a matter of chronology. It did not not ask that it should be done first, but that it should be done before the plebiscite was taken.

I am going to read another paragraph but I should like to omit all the others in view of the time. The Commission states in paragraph 225 ;

"There is, indeed, no doubt that the 'Azad' forces now have a strength which changes the military situation and to that extent makes the withdrawal of forces, particularly those of India, a far more difficult matter to arrange within a structure which considers only the regular forces of two armies. Although it might be a matter of discossion whether the numerical strength of the 'Azad'

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Kashmir forces has actually increased since August 1948, there is no question that those forces, who have since then been working in close co-operatton with the Pakistan regular Army and who have been trained and officered by that Army, have increased their fighting strength. It is reasonable to suppose that, if the Commission had been able to foresee that the cease-fire period would be prolonged throughout the greater part of 1949 and that Pakistan would use that period to consolidate its position in the 'Azad' territory, the Commission would have dealt with this question in part II of the resolution of 13 August".

Could there be anything more conclusive in favour of what I have been saying ? Therefore, those are the changed conditions in regard to the army of that area.

I have already referred to the war of propaganda; therefore I do not propose to repeat it. Now comes the International position of the State of Pakistan.

Here I want to preface my observation by saying that whatever I say does not constitute in any way a reflection upon the motives of the six other States represented around this table that are in military alliance with one party in this situation. My Government has stated its position in regard to these matters. Wherever there has been opportunity of direct communication with Governments or of personal contacts, we have explained that we do not doubt their motives. We do not for a moment say that their purpose is to arm Pakistan against India. But the question is, what will happen to this considerable amount of equipment that now goes into this territory, whereby the entire military balance has been altered ?

If the representative of the United Kingdom, whose country had the responsibility at the time of the partition, would go into the history of that period, he would find that one of the main problems discussed at the time of partition was the balance or military forces and equipment on either side in order to maintain stability. Now, that equilibrium has been upset; and, therefore, this neighbouring country of ours,

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in dispute with us, always threatening war and crusades and keeping up a campaign of hatred, has now at its disposal very considerable quantities of equipment for use on the ground and in the air. When we come to the question of the military preparations, I shall read out such information as we have. Therefore, the equilibrium that obtained, at the time of the conclusion of the signing of this plan, which is called the Commision's resolution, no longer exists. Whenever there is talk about the withdrawal of troops, which the Foreign Minister of Pakistan mentioned in his observations, all these factors have to be taken into consideration.

When India was partitioned, some seven or eight million people from either side went to the other country. It was an exodus which inflicted a great deal of hardship on the populations concerned. Fortunately for us, we have resettled practically all of them. With an idea of the refugees, the Council will be able to see that there is a steady stream coming from the other side, with which we have to deal, but any change in his situation, any stirring up of trouble here, any attempt to unsettle conditions today, would start a scare and an influx of refugees. The first thing that happens when there is an influx of refugees is the slaughter of populations of the community in the country concerned. It will happen in India, and I fear it will happen in Pakistan.

To sharpen the statement I have to make this morning, I might take the problem of refugees itself. The Pakistan Foreign Minister, in speaking to the Security Council, referred to the 500,000 refugees that have gone into Pakistan. I do not know whether those refugees referred to were people from Kashmir alone or whether this is a reference to the 1947 period, when they were trekking both ways. I have no doubt that 500,000 people went through Kashmir into Pakistan [761st meeting, para. 30]. More or less may have gone; it is immaterial.

However, what is of relevance to us is the position now and the treatment of the minorities. Our present figures—and we have a very considerable organization for dealing with this

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—show that the migration of Hindus from East Pakistan to India was 4 million. The migration of Hindus from West Pakistan to India was 4.7 million. The migration of Muslims from India to East Pakistan was 1.5 million. The migration of Muslims from India to West Pakistan was 6.1 million. However, the important part today is the return of these people to India. The return, not of Hindus, but the return to India of Muslims who have migrated to East Pakistan is at the present moment 1 million. Therefore, what I said yesterday about our being a secular State stands vindicated. One million of the Muslim faith have come over from East Pakistan to us. About 100,000 have come over from the West to us.

In Kashmir itself, the Jammu and Kashmir Government have a very well organized refugee organization. Whilst the Foreign Minister says that 500,000 people went through Kashmir at that time, the present figures show that 450,000 Muslim refugees from Pakistan-occupied Kashmir have returned to Kashmit and they have been rehabilitated. We have figures on them because this rehabilitation costs money, and the figures show that 450,000 of them have been rehabilitated. Similarly, 122,429 non-Muslim refugees have come into Kashmir from Pakistan-occupied Kashmir. That is to say, very nearly 600,000 people have come in as against 500,000 who went out. What is more, they are all rehabilitated.

Today our problem is the problem of people of either faith coming into India because of better economic conditions, because of the secular conditions, and so on. In case the Foreign Minister challenges me on that, I shall read a very short extract from a statement by his own Prime Minister of today. Mr. Suhrawardy questioned a member's statement during a discussion in the Pakistan National Assembly in October 1956 with regard to the treatment of peoples in their own country and why people of a non-Muslim faith should be loyal. This is what he said :

> "You tell me today what signs have they"—that is, the non-Muslims—"shown of loyalty to Pakistan. My answer is clear. What have you done for them to get

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their loyalty? In what way have you shown them that you treat them in the same manner in which you have treated the Muslims? How many posts, offices, jobs, positions of honour and positions of responsibility have you given them?"

That is the statement of the present Prime Minister of Pakistan. In East Pakistan there have been Government regulations in the way of official circulars asking firms not to employ people who are not of the Muslim faith and for the exclusion of non-Muslims from the cloth trade, which is held 80 per cent by them, and official instructions to all foreign oil companies for the exclusion of Non-Muslims. There is an increase in the number of crimes against this particular section of the community, and the whole system of education is being placed on a religious and non-secular basis. What is worse, there is the wholesale cancellation of licences for fire-arms for the non-Muslim population, while there is a free distribution of them to the other side.

Those are the changed conditions that exist. In view of those changed conditions, how can the Security Council consider that the position that existed in 1949 exists today? If there were a possibility of the total withdrawal of all these forces and the restoration of law and order and peaceful conditions, that would be different. This is what has happened.

The repercussion of all these matters in India is very considerable. The instabillty that will be created in our part of the world is such that any attempt to inflict any hardship on the minorities in Pakistan is bound to have equal repercussions in spite of a very stern policy of our Government in regard to racial or religious offences. In spite of that, it will create trouble. When violence breaks out, it will break out in a very large way.

In dealing with changed conditions in the State, I must also refer to the economic and social position in the Indian-administered area.

In the first five-year plan, the State laid out £9 million;

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in the second five-year plan, £32 million. It has abolished what used to obtain in the old, feudal days: the compulsory levy of grain on the peasants. Debt conciliation boards have scaled down rural debts by 80 per cent. An area of over 50,000 acres has been brought into cultivation. About 3.5 million pounds of fertilizer are distributed each year. During the last two years, 100,000 acres of land have been reclaimed. Electric power has begun to go into the villages. Local installations of power plants and the purchase of bulk electricity from neighbouring India contribute a very considerable part of the light and power in the area. Four hundred and twenty-five miles of new roads have been built, and a large number of the old roads have been improved. New bridges have been built. The customs duties between India and Kashmir have been abolished. Factories have been opened for the processing of minerals, the tanning of leather, and so forth. An industrial revolution is taking place in the area.

The most important change, however, in so far as it affects the other factors which have been mentioned, relates to the visits of foreigners to Kashmir. During the days of the trouble, when actual hostilities, were going on, we restricted, for security reasons, the entry of foreigners into Kashmir. In 1944, which was before the days of the trouble and a peak year for tourists, 27,000 people went to Kashmir in the tourist season; last year, 62,000 people went there, out of which 9,000 were non-Indians—that is, European and American tourists.

I turn now to the field of education. Over 500 new primary schools have been established, 126 secondary schools, and seven colleges. Thanks to the operation of the United Nations Children's Fund, there has been an extensive campaign to improve health conditions, particularly as regards tuberculosis, which is one of the troubles in Kashmir.

In this connexion, I should like to read a few brief comments made by foreign observes. This is what a special correspondent of the "Manchester Guardian"—a United Kingdom newspaper—had to say :

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"In Srinagar, rations have gone up from 18 to 24 ounces"—of course, this may sound very small to representatives of Western countries—" and the price has gone down by 10 per cent. The import duty on salt has gone, water rates have been lowered, Government servants' wages raised; and, to silence anti-bureaucratic feelings, peoples' tribunals to examine corruption and nepotism are being set up··· co-education is to go and education is to be free for all."

A special representative of the "Sunday Times", one of the organs of British conservative opinion, said the following —which I quote because the Foreign Minister of Pakistan made references to suppression in the Indian-administered area of the State :

"The Prime Minister (of Kashmir) moved unescorted among crowds who garlanded him, and peasants showered lumps of sugar, signifying a sweet welcome, on his car; while everywhere there were shouts of 'long live' and women sang 'our bread-winner has come".

This is what the special correspondent of "The Times" of London had to say :

"More than Rs. 20 million debts have already been reduced to Rs. 3,500,000··· Irrigation is being extended, and improved seed and artificial fertilizer supplied at cost price··· Electric power is being increased, and industries ···improved and expanded."

Similar accounts were contained in "The Economist" of of London, "The New York Times", Swedish newspapers, Egyptian newspapers, and so forth. Statements to the same effect have been made by ordinary visitors to Kashmir.

I have now described the changed conditions on our side of the State, that is, the Indian-administered side. These changed conditions have a bearing on the Council's considera-

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tion of the present problem. The Council must view the resolutions adopted in 1949 in the light of all the changed conditions and circumstances to which I have referred.

I turn now to conditions in the Pakistan-occupied part of Kashmir. In this connexion, I shall quote from our annex III [S/PV.762 add.1, annex III] which, like the other documents to which I have referred and shall refer, I ask to be received as an official document of the United Nations.

First, I shall read excerpts from a memorandum to the members of the Pakistan Constituent Assembly from the All-Jammu and Kashmir Muslim Conference—that is, the large national organization of "Azad" Kashmir to which the Commission referred as wishing to accede to Pakistan :

> "For the last few years the people of 'Azad' Kashmir in general, and those of Poonch (the sword-arm of Pakistan and 'Azad Kashmir) in particular, have been subjected to great torture and terrorization. Account of this terrorism is very heart-rending. The 'Azad' Kashmir Government, acting on the advice of the Minister of Kashmir Affairs, is primarily and mainly responsible for the conditions that prevail in Poonch today."

The memorandum then goes on to describe these conditions as follows :

> "Martial law was imposed in Poonch last time without any justification···At least a dozen houses were blasted with dynamite, a number of poor families rendered homeless. Ruthless and random firing by mortar guns took place, resulting in many deaths.
>
> "Arrests of men, women and in some cases of children were effected. About 400 persons are still under detention in the concentration camp at Pullandri."—these statements are interesting in the light of the reference which has been made to persons detained by the Kashmir

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Government in the Indian-administered area of Kashmir. —"...The people have been arrested without any warrants of arrest, on mere suspicion or personal vendetta... They are rotting in the concentration camps at Bagh, Bari, Pullandri and Sarsawah. They are forced to live under sub-human conditions...in Pullandri jail 340 persons are detained in two rooms which have been built to accommodate only thirty-six persons. Enghteen hundred gallons of water are required daily in this prison, but only 800 gallons are supplied.

"...There is a concentration camp at Muzaffarabad also ...The face of Ghazi Feroze Ali, Secretary of the Pullandri Muslim Confeaence, was blackened. He was dragged through the bazaar, garlanded with shoes"—that is a form of insult in our part of the world—"and the police spit upon him and hissed and hooted him for hours... The same treatment was meted out to Abdul Aziz Maloti' Women were arrested and subject to unbecoming and insultin; treatment."—and there follows a description of cases of molestation which I do not wish to read out.

The memorandum then refers to the collection of arms, and states that persons practising legal professions in that part of the world have been terrorized. I continue to quote from the document :

"Arrests and detentions withou trial are a common feature of public life now..."

"For the last six years, people of 'Azad' Kashmir have not been allowed to elect a government of their own. The refugees of Jammu and Kashmir, half a million of whom are on this side of the cease-fire line, are living in sub-human conditions. Their rehabilitation has been entrusted to unpopular, callous and unsympathetic so-called leaders who serve the personal purposes of the officers of the Kashmir Affairs Ministry..."

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"To say that 'Azad' Kashmir has been developed economically is to deceive the world and yourselves..."

This submission is not meant for propaganda purposes. It was sent to the Pakistan Constituent Assembly by a political party seeking some redress. The following quotation from the memorandum is very important to the Council's consideration of this case :

"The Kashmir Affairs Ministry (Pakistan) are the actual rulers of 'Azad' Kashmir are stunned to see what Pakistan means to them and those in Indian-held Kashmir have become hesitant in their blind love for the Crescent..."

The memorandum then demands the recall of all Punjab constabulary from "Azad" Kashmir immediately and the recall of most of the non-Kashmiri officers, the appointment of courts of inquiry, and the establishment of a legislative assembly.

I repeat that this memorandum is not meant for purposes of agitation or propaganda. It was sent to members of the Pakistan Constituent Assembly by the All-Jammu and Kashmir Muslim Conference.

I should now like to read out some excerpts from an appeal made to the members of the Pakistan Constituent Assembly by important representatives of the people of "Azad" Kashmir. This appeal is also worthy of the Security Council' attention.

"For the last seven years the people of 'Azad' Kashmir and the Jammu and Kashmir refugees have not been given a chance to elect their own government. Governments have been imposed upon them...The Ministry for Kashmir Affairs wields totalitarian control over the administration of 'Azad' Kashmir."

The people who signed this appeal are all responsible persons in terms of Pakistan political life, according to their

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designations. They made this submission on the "Azad" Kashmir side. I have said nothing about the local conditions in the northern area, because it is very largely inaccessible, but the people live under very primitive conditions and the developments that have taken place in these areas are of a military character, to which I shall refer later.

In his statement, the Foreign Minister of Pakistan referred to conditions of repression and imprisonment in the heart of the Kashmir State which is not occupied by foreign forces. He read out a large number of names, and said that these people were in prison at the present time. I should like to say, because this will go out to India, that some of the persons he mentioned are not in prison now; they have been out of prison for a long time. He said that Prem Nath Bazaz, a Hindu, was in prison. He is not in prison. He was imprisoned for a year, and was released a long time ago. The people were detained on the orders of the Kashmir Government. It was stated that Mr. Ghulam Ahmad Ashai is now in prison, but he was released in 1954. Another person mentioned, Mr. Pir Maqbool Shah Gilani, was released about a year ago. Mr. Abdul Ghani Goni was released on parole in the middle of last year. Mr. Ghulam Mohammed Dar was released towards the end of last year, and Mr. Sadruddin Mujahid was released on 5 October last year.

I am puting all these facts before the Security Council because an attempt has been made to show that there is a reign of terror in our part of this country. Last summer 62,000 people entered Kashmir as visitors, and 9,000 of them were non-Indians, they were foreigners. A great many of them were newspaper correspondents, cinema-men—because it is a great place for taking photographs—tourists and writers. They travelled all over the country, and that fact is a sufficient indication that there is not an "iron curtain".

Reference has been made to Sheikh Abdullah. I have already read from his statement to the Constituent Assembly to show what his political position is. Sheikh Abdullah was placed under detention by the Government of Kashmir. There is a detention law in Kashmir, just as there is a detention law

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in India. This is a piece of legislation which, in spite of our desires to maintain an abstract liberty, we found to be necessary in view of subversive movements in the country. Today, under this law, there are forty-nine people under detention in the whole of Kashmir, a good many of them for acts which have nothing to do with political crimes.

What is the procedure under this law? First of all, their offences must be stated to the "detenus". A man cannot just be detained, he must be told why. They have access to a tribunal of high level, to judicial persons who have to investigate the cases. Objection might be taken to this legislation, and there are some people in India who seriously object to it. The cases are examined by the judicial tribunal, which can order the release of a "detenu", and the Government cannot refuse that release. The "detenus" are not brought to public trial because there are reasons which may affeet relations between States, not only with the State of Pakistan, but with other States. You have already heard, when I read from a document this morning, that my colleague from the United Kingdom quite rightly felt very concerned. I was more concerned, but I did not get any remedy for my concern, though he did for his. That is how the world is, Mr. President. If some of these men were brought to trial, the Government could not withhold any evidence under our system, whoever that evidence might affect. It would create an enormuus number of difficulties, but I do not want to ask the Council to go into all the details. I simply wish to say that, even taking the quantum of it, there are forty-nine persons under detention, some for short periods, some for longer.

It is quite true that the former Prime Minister of Keshmir is under detention, but may I say, without any offence whatever, that the present Prime Minister of Pakistan was arrested in 1948. It is one of those things that happen in times of social changes. My Prime Minister was under detention for a long time, and he has said that he learned a great deal during that period. The present Prime Minister of Pakistan was a prisoner of the former Pakistan Government, but I must say that he has not retaliated in the same way.

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With regard to Sheikh Abdullah, in a document which I am now going to put in, there are at least five or six extracts from testimonials to Sheikh Abdullah given in previous times by Pakistan publicists and ministers, and there is no name that was too bad for Abdullah at that time. The question is, at which time did he turn quisling.

The letter of the former Prime Minister, Sheikh Abdullah, has been put in as a document by Mr. Khan Noon, and I am sure that he will agree with me that the only way to understand correspondence is to put in both the letter and the reply. Therefore, I have assisted him by providing technical assistance is putting in the reply of Mr. Sadiq, the President of the Kashmir Constituent Assembly. The letter of Sheikh Abdullah, which was put in as a criticism of the Government and against accession and so on, was sent to the President of the Constituent Assembly in order to make certain protests. The President of the Constituent Assembly was elected. He sent a reply; so if the Security Council looks into one letter it must look into the other. Therefore, in the annexes to my statement [S/PV. 762 Add. 1, annex VII) we have put the two together.

I have a great many more notes here about which I wished to talk, but I think you have heard me long enough. I shall only deal with the essential point that remains. I have no time to contradict every paragraph that appears in the statement of the Foreign Minister of Pakistan. There is, however, a misquotation from a Commission document which gives a totally erroneous impression of its meaning. I think that in saying that I am being moderate enough.

The present series of meetings are being held because of the letter dated 2 January 1957 from the Minister for Foreign Affairs of Pakistan to the President of the Security Council. In presenting his case, the Foreign Minister of Pakistan has done two things. First, he delivered what amounts to threats. He indicated that trouble would brew. We have had an opportunity of comparing some of these statements with the statements made in 1947. They have, shall I say, a very close

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family resemblance, especially if you read them parallel to the other statements I read out a while ago; that is to say, if this was a beginning, then this would not end with the Security Council: Pakistan would propose to do something itself, and so on.

Then Mr. Khan Noon said :

"Here I would like to say that it is sometimes argued by India that everything is peaceful"—we have only said it is peaceful now on the Indian—administered side; on the contrary, we have said it is not on the other side—"so why bother about Kashmir ? But I warn you,"—he warns the Security Council—"that is a calm before the storm." [761st meeting, para. 105].

Now I ask you gentlemen whether this is the language of the Charter: "But I warn you, that is a calm before the storm. Everything is not peaceful." ?

Mr. Khan Noon continued :

"We have just seen a telegram which states that, on 11 January, our Minister for Information, Mr. Amir Azam Khan, made a statement in Karachi that the Indians have massed their troops on our border. The excuse that Mr. Nehru gives is that he fears an attack from Pakistan, whereas we have not sent one soldier to our border. The fact that he is afraid of a war breaking out because of the Kashmir problem should assure the Security Council and the world that it is peaceful on the surface, but if the Security Council closes the door on a peaceful settlement we cannot say what will happen. If the Indian troops are there because India fears war between India and Pakistan that should be a sufficient answer to these people who say that 'all is quiet in the Kingdom of Kashmir' "—it is not a kingdom any more—"and India and Pakistan and the Security Council need not take any action' " [*Ibid*].

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Then he gives some advice to the Security Council :

> "Please do not be misled by the fact that we are peaceful and that we want a peaceful solution."—The Security Council has had sufficient evidence adduced before it by me to show the nature of these intentions.—"We are looking to the Security Council to do justice to these poor and poverty-stricken people"—I have also read to you the conditions on either side—"of Kashmir to whem it has promised a free and fair plebiscite under the auspices of the Security Council, which plebiscite has been denied to them for the last eight years." [*Ibid.*, para. 106].

That is a denial of fact because what has been promised is what is under part III of the agreement.

I shall fitst deal with this statement. There is an allegation here which is of a serious character and I say with the highest respect to the Foreign Minister of Pakistan this should have been a subject of protest to my Government. That is the normal practice between two neighbouring Governments if either masses troops on its border. Now what is the position ? In actual fact we have reduced the military strength in Kashmir recently. I referred this to my own Prime Minister and this is the truth. There is no truth whatsoever in the statement made by the Pakistan Minister for Information on 11 January. Of course, the Minister for Information, as you know, in peacetime is the reincarnation of the Minister of Propaganda in wartime.

The United Nations observer teams are located all along the cease-fire line in Jammu and Kashmir. If there had been any massing of troops in that area, as alleged by Pakistan, the matter would have been immediately dealt with by the chief military observer of the United Nations group. That is with regard to the cease-fire line.

If the complaint is that we are massing troops on the Indo-Pakistan border, along the Indo-Pakistan border in the Punjab, that is in the western area, there has been no increase

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in the strength of our troops. The Prime Minister at the moment is Minister of Defence as well as Prime Minister, so he ought to know. If at all, the strength of troops deployed on the border has decreased as the majority of border posts have been handed over by the army to the Punjab amed police as the local police, not of the State Government. I do not know why and where the information came from; it may be that some observation from the air miscarried. Observers probably mistook Pakistan troops for Indian troops; they look alike. That is quite possible; but I think the interesting part of it is that on this day, when we were supposed to be making all these great troop movements in preparation for war, the great majority of our generals were taking part in a polo tournament in Calcutta. That is not the way to wage war. Therefore, there is no substance whatsoever to it. This is part of the propaganda of the Minister for Information. The Foreign Minister has only relayed what his Minister of Propaganda put out.

As against that, we have to take the position that not merely are there Pakistan troops in Kashmir—and all of you sitting around this table representing independent States realize that the security of a country is a vital concern—but all the Pakistan military concentration of any importance are on our border. Abottabad is sixteen miles from the Kashmir border. It is one of the main military concentrations. Rawalpindi, which is the General Headquarters, is thirty-one miles from the Kashmir border. Murree, where another concentration of the 12th Infantry Division of the Pakistan army is located, is fifteen miles from our border. Jhelum is four miles from our border. Kharian is thirteen miles from our border. Sialkot is six miles away, so that we are ringed around by Pakistan concentrations the whole time. In annex II of my statement [S/PV, 762/Add. 1], which has been distributed, there is a map which shows how this encirclement is carried out, so that when we talk about security we are not just producing an argument.

If you want any further details, since the Minister for Foreign Affairs of Pakistan has taken the liberty of making a

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Public statement about the disposition of our troops which turns out to be inaccurate. I take the liberty of telling you how their troop are desolved in the Kashmir area. I did not ask the Pakistan Government where they got their information. I only pointed out that it was inaccurate. This happens to be accurate. Scouts in the northern area of Pakistan-occupied Kashmir—that is the Gilgit area—number 3,000. They are officered by Pakistan Regular Army officers. Formerly, there was a distinction between the A and B categories of the "Azad" battalions, but now it has almost disappeared, meaning thereby the local militia has now become a regular army. All "Azad" Kashmir battalions and their training and equipment are on a par with Pakistan regular troops. Regular Pakistan army officers with Pakistan forces and scouts in Pakistan-occupied Kashmir are more than sixty. The commanding officer and adjutants in most "Azad" Kashmir battalions are from the Pakistan Regular Army. There is a sprinkling of regular Pakistan officers also in all "Azad" Kashmir battalions and in the scouts organization.

As far as the deployment of troops is concerned—because it affects our security, as I gave the distances—there is one corps in the Rawalpindi area, one armoured division in the Rawalpiadi area, the 12th Infantry Division under the operational control of the 15th Infantry Division, three infantry brigades in the Sialkot area, and this division is under its operational control. In other words it is these nerve centres that control the entire territory of Kashmir under Pakistan occupation. Kharian and Jhelum are being developed as big bases, only four miles from us and a new component for the armoured division is to be used as a base for supplies of the new military equipment coming in under American aid. "Bashkars" are being trained for military operations in the "Azad" Kashmir territory. Personnel is drawn from the "Azad" Kashmir battalions and is trained by Pakistan personnel.

Here is another important part of it. Most of the airstrips and landing-grounds are being widened and improved to take the latest type of jet aircraft. We have the length of these airstrips and the increases that have been made recently and

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we are quite satisfied that the increase in the length of these runways is for the purpose of taking the jet planes which they could not have taken before.

The 12th and 15th Infantry Divisions have been under the operational control of that part of Kashmir. Formerly this was the responsibility of the 12th Infantry Division. The former armed forces personnel is being organized by ex-Major-General Akbar Khan and others, to raise a volunteer corps to liberate Kashmir. This is the same Akbar Khan who was not supposed to be in Kashmir but appeared under the name of General Tariq and who was prosecuted by the Pakistan Government for conspiracy against the Pakistan Government; and now, I suppose, a new patriotic phase has emerged and he is going to liberate Kashmir. So the former insurrection leader has also been put into this thing. I would like the Security Council to take note of this position.

In regard to air bases in Northern Kashmir, Gilgit and Chitral are the two important airfields; they are on the Soviet-Chinese-Indian border and, according to the reports that we have, are being expanded and developed. Of course, equipment cannot be manufactured in Pakistan. Heavy machinery and radar are reported to have arrived there. The "Azad" Kashmir forces have no air arm of their own. Before November 1948, there were only two cross runways in the Gilgit airfield; one was 915 yards and the other 650 yards. They were for the small observation planes of the British days to come down on. But now the runways have been increased to 2,000 and 2,500 yards. I do not think I will read out the remainder because it is highly confidential information.

I have said, and I would like the delegations of the countries which are in military alliance with Pakistan—and particularly the United States—to accept my assurance, that in any observations I make, no reflection that such assitance as they give is intended to be used against us. But unfortunately weapons of war have no magazine for intentions; their only magazines are for projectile power. You cannot decide beforehand which way they will fire.

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I will not quote statements from the newspapers or from legislators or agitators, it is too serious a matter for that. But I will quote the present Prime Minister. The Prime Minister, speaking at Lahore on 2 December 1956, not long ago, defended Pakistan's policy of military alliances. He said that when the Government of Pakistan decided to remain neutral and weak there was no immediate danger to its own independence—it is quite obvious it was not its own security.

"I see no country that is prepared to attack engulf or destroy us. That includes us, because Mr. Suhrawardy was formerly a member of the National Party—"I see no country that is prepared to attack, engulf or destroy us", I hope he still lives with that statement. The immediate disadvantage to Pakistan, however, is that it will not be able to assert its rights. The Prime Minister continues :

> "We may have to keep our rights on Kashmir, on canal waters or to bow our heads to a superior and more powerful neighbour..'

Then he went on to refer to India's attitude towards Pakistan. It is not a defensive affair, and these alliances therefore are intended to negotiate "from strength", as it is called, whatever that means.

The foreign Minister said in Rawalpindi on 21 October :

> "There is only one country in the world inimical to Pakistan and that is Bharat"—that means us, as they do not like us, but this word occurs in our Constitution and we have no objection to it, we are not ashamed—"on account of its intransigent policy in Kashmir."

There is only one country inimical to Pakistan, but they have signed a trade agreement and we are always common sufferers under certain conditions.

Mr. Firoz Khan Noon said at Lahore the previous day, speaking in justification of Pakistan adherence to military

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alliances, and specially the Baghdad Pact and the SEATO, defended it on the grounds that :

> "A powerful neighbour country which was inimical to Pakistan had in fact forced it to seek friendship elsewhere. That country had grave differences with this country and the two pacts have enabled Pakistan to ensure its defence against aggression. The country's freedom could only be preserved with the help of those friends".

These are some of the most restrained statements, on this subject. I could quote a great many more, but it is not my purpose to aggravate this matter because so many other countries are involved; in spite of all the reservations I have made, it would be bound to leave a feeling that we were extending this debate to other matters such as the general world policies of certain countries.

At this moment it is necessary for me, in a few minutes, to say what our position is. There are certain proposals made by the Pakistan Government. I had intended to deal with them this morning but it is not necessary for me to deal with them now because of the draft resolution which is before us [S/3778]; no doubt they will be discussed at that time. But if I deal with these proposals briefly it should not be considered that we have exhausted our observations on this subject. The proposals are as follows :

> "In view of this grave situation the Government of Pakistan requests the Security Council to take action on the following lines ;
>
> "First, call upon India to refrain from accepting the change envisaged by the new constitution adopted by the so-called Constituent Assembly of Srinagar..." [761st meeting paras. 107 and 108].

I explained yesterday that this Constituent Assembly does not proceed from the resolutions of the Jammu Confer-

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ence or anything like that [763rd meeting, paras. 132 ff.]; it has its origin in the proclamation of the Head of the State, the text of which I read out to you, and its purpose is the creation of a constitution for Kashmir itself. The relation of Kashmir to India, so far as we are concerned, is decided by the accession. Therefore, it is not the Constituent Assembly that should be attacked and I do not see what restraint can be imposed upon the exercise of the sovereign rights of an independent country. How can the Security Council turn round to us and say that a constituent party to a federation cannot have its own constitution, to order its own life in its own way? If anything is to be attacked it must be the accession, as I pointed out yesterday, and I submitted that the Security Council is in no position under the Charter to go into the legality of the accession; and so far as we are concerned it is complete.

The second paragraph of the proposals reads :

"Secondly, under Article 37, paragraph 2, of the United Nations Charter, spell out the obligations of the parties, under the terms of the international agreement for a plebiscite as embodied in the United Nations resolutions". [Ibid., para. 109].

I think it would be repetition several times over for me to point out the fallacy in the last three lines. There is no international agreement for a plebiscite; there is international agreement on a plant for which there are certain pre-conditions. In these matters we must not jump from one thing to another; it does not mean the same thing. We are always willing to have the obligation of this body under the Charter spelled out.

Then there are remedies proposed. I do not think I shall deal with these in detail, but so far as the remedies in paragraph 77 of the first report of the Commission [S/1100], are concerned, before those who are applying their minds to it make their final decision, I would request them, particularly those who regard themselves as in close relations with us, to

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refer to the Commission's report on this subject made nine years ago. It is a bad policy to subscribe oneself to courses of action for reasons that are not related to this subjects. So far as paragraph 77 of the report is concerned, we reserve our comments, except to refer to the paragraph in the Commission's report in regard to the introduction of other troops and forces in the area, and the answers that have been given. This was a Pakistan request, made by Sir Mohammad Zafrullah Khan nine years ago: it was reviewed and the Commission turned it down. I want to submit also, for those who are very constitutionally minded, that this is a contravention of the Charter.

I would like to say that the substance of my submission before the Council is that the Government of India asked the Council to carry out the provisions of the Charter, which is what it will do. We, on the other hand—and I make a solemn declaration on the part of the Government of India—shall not use force. We shall not do a single thing that will upset stability. We have no desire—and we have never done it in the past—to change the status quo in regard to any of our difficulties on our frontiers by the use of force. The most outstanding instance is the Portuguese colony of Goa on our western side. It is Indian territory under imperial occupation. We have a moral duty as a national movement to bring about its liberation. There are our friends from the Fourth Republic of France who have possessions of this kind in India. We patiently negotiated with them, as they did with us for over seven years : while if it were a question of force, it could have been decided one way or another before. Therefore we do not change the state of affairs by the use of force.

I have been asked by the Government of India to state, therefore, that not a gun, not a soldier will be used, not a shot will be fired by us. There will be no aggressive action taken so far as we are concerned. It is a little late in the day for Mr. Khan Noon to come and tell us about a no-war declaration—which sounds very well except when you read the conditions. A request was made by us to his predecessor when he was Prime Minister and Foreign Minister eight or nine years ago, and repeated time after time to his successors, including

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the Ambassador to Washington at the present time, for a no-war declaration. Therefore, while the present statement may have the same label, it has not got the same substance.

I am to assure you that so far as we are concerned, even in order to redress our wrongs, even in order to restore our territories, to assert the sovereignty which this Council has at no time challenged and, what is more, repeated time after time, and in order to pursue the purposes embodied in our Constitution, and to establish the integrity of our land, we are not prepared to use force. But at the same time, in view of the threats that have been made, if our territory is violated, then we shall use the provisions of the Charter to defend what is ours under the law and in terms of our possession. And this is merely a very humble statement of the position of the Government of India.

It has no relation whatsoever with our armed dispositions. I have with the utmost frankness told the Council what our armed disposition is. Ours is perhaps the only country in the world which has reduced its military budgets. We spent somewhere about 18 per cent of our total revenues on military expenditures, as against 37 per cent of Pakistan's. Our army has gone down in numbers and in its offensive power, while the other army has gone up. But believing as we do that it is not possible to equate this position, especially in the context of these military alliances, by entering into an arms race, and that probably the risks of peace are no greater than the risks of war, we are taking this line.

The Security Council, composed as it is, in the circumstances in which we find ourselves of not having considered this question for five years, and, I hope in view of the submissions I have made, has a serious responsibility to pronounce on this question. I say that the fundamental question is whether the Security Council is prepared to say to itself, and whether each member State of the Council is prepared to say to itself, that from an aggression whatever may be the rights of the other side, other consequences beneficial to the aggressor can follow.

That is the issue we are considering in another context and in other places. Therefore, to disregard all that has been

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said by the Commission—and not in one paragraph, but in many—and, what is more, as I said this morning, to draft resolutions on this subject before another side has submitted its case, is not to proclaim the sense of justice and equity of this august Organization.

Therefore, my Government, in full faith, believing in the allegiance of the Security Council to the principles of the Charter, believing in its rights in law, in morality and in ethics, and what is more, knowing what are the interests of the peoples of India and Pakistan, knowing the consequences of unsettlement, remembering the grim tragedy of 1947, knowing the passions that are aroused when there is a quarrel between neighbours, asks you to be careful. We ask for your prudence; we ask for your sound judgement in not jumping into a situation without taking all these facts into consideration.

The Government of India here is not in the dock. We came here as complainants. A distinguished collegue of ours appears to have mentioned this today : why should we be so much on the defence ? If it sounds to people that we are on the defence, it may be because we indulged in some understatements both in the past and in the present. We are here not in order to ask for condemnation of anybody, but we are here in order to state what are our rights under the Charter. Have we the right for the security of our territory ? Have we the right to be free from threat ? Have we the right to feel assured that the machinery of the Security Council and its resolutions are not going to be used as a smoke-screen for the preparation of agression against us ? Have we the right so far as the Council is concerned—and I say that it cannot impose it—to live side by side with our neighbour, free from the threats of a holy war ? Have we the right to enable our peoples, the great majority of whom are below subsistance levels, to devote their energies, their attention, our resources, our friendships, for their economic and political development ?

These are the questions that face us. And while I have no desire to conclude in this way, I cannot but help referring—and I would not have done this if it had some from any other re presentative of the Government of Pakistan except our old

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friend Mr. Khan Noon—to that he told this Council when he said that between the friendship or the Indian and Pakistan people stands Mr. Nehru. I ask the Council to consider that statement, coming from a leading Indian personality only ten years ago, who is a family friend of most of what may be called the ruling families, if you like, the persons in Government positions in India, who knows our intentions and who represented the Government of India as a whole in many circumstances, and telling our people that between the two of us lies the personality of our Prime Minister.

If that is not incitement to revolt against the Government, I ask what is? It is the only part of that statement that has caused our delegation intense pain. That comes on top of the kind of thing that is written in Pakistan.

What I have here is from "Dawn". I am ashamed to read it, but it is my duty to do so. "Dawn" is a paper founded by the founder of Pakistan. It is still regarded as a kind of most important organ, I believe. It says:

> "The Security Council will have barely ten days to decide upon some concrete, tangible, unequivocal and compelling step whereby that rapacious brigand of Asia, that hypocrite masquerading as an apostle of peace with his hands red with the blood of Kashmiris as well as Bharati Muslims, that double-facing, double-talking and double-dealing Brahmin Janus who shamelessly wooes both Moscow and Washington in order to have the best of both the worlds—can be prevented from accomplishing his designs.
>
> "Will the United Nations this time act, or will it again temporize and shirk its responsibility?"

This is about the Prime Minister of India who, when he went to Pakistan—and I make no odious comparisons—was received with greater affection than any Pakistan leader. It goes on to say:

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"Let us hope for the best, but be also prepared for the worst. The one thing certain is that Bharat shall not be allowed to grab Kashmir finally."—so there is no question of the plebiscite deciding—"If the United Nations fails, and those with whom we have thrown in our lot prove faithless"—those are the six military allies—"let the world take note that the prospect of a peaceful settlement will vanish forever. The inevitable alternative need not be spelled out—but come it will."

I do not say it is a statement of the Pakistan Government. But considering that while the Security Council is sitting here, demonstrations against our missions are taking place in Pakistan territory, and what is more, that those demonstrations are addressed and spoken to in cordial terms by the Prime Minister of Pakistan, I hope the Security Council will pardon me if I make references to this. Even where there are hostilities, even when there are greatly strained relations, there are proprieties to be observed. We have also a very sentimental population, not different from theirs. We have a larger country; we have pockets of Muslims all over. I come from a part of India where a considerable Muslim population forms a pocket. We do not want the conditions to be created where they will be the victims of fanaticism and of passion. Therefore, no errors have been made in this.

The Security Council regards this as a dispute. It is not a dispute for territory. There is only one problem before you—whether you will face it or not, and if you do not face it, I say with great respect it is a matter between yourselves and the instructed judgement of your Governments—and that problem is the problem of aggression. My Government, when once that is resolved and when all these elements of aggression are withdrawn, will not be wanting, in its allegiance to the Charter, in finding an arrangement by adjustment with our neighbours which will be to our common good. Any other procedures you may adopt, will not only put off that day, but will aggravate the relations which we are trying very hard to make otherwise.

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It will also prove to those vast millions of the Indian people—and irrespective of all circumstances, they have many friends in this world, in all continents—to the masses of them, that the politics of power alignments, religious fanaticisms, personal antagonisms, take precedence over the fundamental principle of the Charter.

The Charter enjoins upon you, Mr. President, and your colleagues, an action consistent with the crime of invasion.

153. *Text of the speech made by Sir Pierson Dixon (U.K.) in the Security Council meeting No. 765 held on 24 January 1957.*

It is a matter of very deep regret to my Government that the Security Council should have to be dealing once more with the Kashmir dispute. There is the closest relationship between my country and all the peoples of the sub-continent—if I may use a term which, I agree with the representative of India, is not a very elegant one. Ties of history, of sentiment and, as we firmly believe, of interest also, link our small island kingdom with every part of that vast section of Asia.

We are proud of our part in the constitutional development of the Commonwealth. We like to think that, in a period which is past, we contributed not a little of our own to the inheritance of the age-long civilizations of that part of the world. There is much that we have learnt in return.

In the past, as the present, our constitutional relations with the various parts of this area have differed, but our good will to every part of it remains the same.

I should like to take this opportunity of expressing my gratification at the generous remarks that have been made in the course of this debate about the attitude of my Government and of the role played by many of my countrymen during the difficult and anxious period of travail that gave birth to the India and Pakistan of today. Only the voice of envy would, I

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think, deny that the Englishmen, the Scots, the Welsh and the Irish—for, on a small scale, we too have our diversity—all those who served the Crown in the old imperial India and in the transitional period came to feel a deep devotion to the peoples among whom they passed their lives and gave of their best.

In the altered circumstances of the today those feelings persist. From the bottom of our hearts we wish well to the peoples of India and Pakistan. They are partners with us, and with many others, in a community which rises above differences of race or creed and which is, I think, unique not only in the present world, but in world history. Everything that unites these two countries gives us deep satisfaction; anything that divides them causes us deep concern.

Unhappily, today the Security Council is dealing with a problem that does deeply divide these two countries. That the difference is a deep one and that it has caused the strongest emotional reactions on both sides, it would be useless to deny. It is, therefore, the desire of my Government, as it is certainly the duty of the Security Council, to proceed in this matter with the greatest prudence and foresight. Under the United Nations Charter, the Security Council is charged with primary responsibility for the maintenance of peace and security on behalf of the Members of the United Nations as a whole. I am sure that the Council will do its best to act in the spirit of the great responsibilities which it bears.

I shall have more to say at a later stage of the proceedings about many of the matters of substance touched upon in the statements of the Foreign Minister of Pakistan and the representative of India. At this stage, however, I propose to limit myself to the subject matter covered by the draft resolution which my delegation has joined in sponsoring [S/3778]. This particular matter has, of course, bsen considered by the Council before.

The Constituent Assembly was established in Srinagar in 1951. As Mr. Krishna Menon pointed out yesterday, its primary task was to promote the processes of self-government in Kashmir territory. That is not a matter which in itself comes

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within the jurisdiction of the Security Council, and my Government, for one, of course, welcomes any step towards the development of democratic processes in Kashmir as elsewhere; but when its attention was called to the matter in 1951, the Security Council could not fail to take note of the reports that one of the functions of this Constituent Assembly would be a decision on the future shape and affiliation of Kashmir.

The Council was naturally concerned that nothing done in Kashmir should prejudice a settlement of the whole issue in accordance with the principle that had been the basis of its consideration of the matter since 1948, that is to say, that the final disposition of the State of Jammu and Kashmir should be made in accordance with the wish of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations.

What action did the Council then take ? It did not seek to interfere with the processes of democratic development in Kashmir, but it affirmed a quite simple propositon that the convening of the Constituent Assembly and any action that it might take would not constitute a disposition of the State in accordance with the principle to which I have just referred.

The Council was assisted in its task at that time by the explicit assurances at various stages of the proceedings by the representatives of the Government of India. In particular, on 9 March 1951, Sir Bengal Rau had this to say :

> "Will that assembly decide the questiou of accession ? My Government's view is that, while the constituent assembly may, if it so desires, express an opinion on this question, it can take no decision on it." [536th meeting, para. 23].

Then, after the resolutions had been passed, Mr. Dayal on 29 May 1951 reiterated this assurance and said something else, which I should also like to quote :

> " . . .I reaffirm that so far as the Government of India is concerned, the constituent assembly for Kashmir is not

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intended to prejudice the issue before the Security Council or to come in its way." [548th meeting, para. 40].

The position thus was quite clear, and I now turn very briefly to what has happened since. If I understood Mr. Menon correctly when he spoke yesterday, [763rd meeting, paras. 135 ff.], he said that the Constituent Assembly for Kashmir had passed a Constitution, some of the clauses of which came into effect automatically on 17 November 1956, and others will come into effect on 26 January next. In particular, Mr. Menon referred to section 3 of the Constitution as already being in effect, and that section, I believe, states that the "State of Jammu and Kashmir is and shall be an integral part of the Union of India". In these circumstances it is surely quite natural that the Government of Pakistan should seek some reassurance as to the views of the security Council.

If I understood Mr. Menon correctly yesterday, he said that the Constitution for Kashmir which we are considering is that of "a sub-sovereign body" [*Ibid.*, para. 136]. This is, I take it, another way of making the point made by Sir Bengal Rau in 1951 when he told the Security Council that as regards the question of accession the Constituent Assembly can take no decision on the matter.

This, then, appears to be the position today, as it was in 1951: The Security Council, in dealing with this limited question, has before it therefore the same considerations as it had in 1951. In these circumstances there appears to be no reason at all to modify the simple proposition set out in certain parts of the Security Council resolution of 30 March 1951 [S/2017/Rev. 1] to which I have previously referred.

In view of the expressed anxiety of the Pakistan representative on this score, it seems to me reasonable for the Security Council to consider a short draft resolution which reaffirms the clear stand it took in 1951. It is for that reason that the United Kingdom joined in sponsoring the draft resolution before the Security Council.

My colleague from India complained this morning that

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the draft resolution had been circulated before he had completed his speech. Perhaps I should say, as one of the sponsors, that I had taken the statement we listened to yesterday afternoon as a clear exposition of the Indian position on the particular aspect of the Kashmir problem with which the draft resolution deals, that is, the point relating to this constitutional issue. There is, of course, a special reason for expedition in connexion with this particular point, since the other party to the dispute, for Government of Pakistan, has expressed concern lest some step might be taken in the very near future; that is, on 26 January. For the pratical purposes of our discussions here in New York, this date may in fact partially be considered as 25 January, since New York is eleven to twelve hours behind Delhi and Karachi in time. It is evident, therefore, that time is very short if some reassurance is to be given.

There are, of course, other matters of the greatest importance referred to in the speeches of the representatives of Pakistan and India. These matters are before the Security Council, and they are matters which require full and most careful consideration. It is for this reason that it seems wise to include operative paragraph 2 in the draft resolution, and I would wish to return to these questions as that later stage.

154. *Text of the speech made by Mr. Walker (Australia) in the Security Council meeting No. 765 held on 24 January 1957.*

It is not my intention today to enter at any length at all into the substance of the difficult and long-standing problem of Kashmir, but I thought I should say a few words immediately regarding the draft resolution which, together with several other representatives here, we are submitting to the Council. We think that it is necessary to present this draft resolution now and to comment briefly on it just because of the march of the calender and the references which have been made to the date of 26 January, which, together with India, we share as a national festival.

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I should like to say that, so far as I am concerned. I took the representative of India's remarks yesterday as being a full statement on the particular matter to which this draft resolution is addressed, and for that reason I was prepared to join in sponsoring the draft resolution this morning.

The Kashmir problem is one that has occupied the attention of the Security Council for a number of years, and I think it will be recognized that if a solution satisfactory to both India and Pakistan has not been put into effect, it is not through any lack of effort on the part of the Council or through any failure by the members of the Council to study the complexities of the problem in a spirit of good will towards both parties. Indeed, the Council has, in its past resolutions, laid down certain basic steps that should be taken towards a solution, steps which were firmly founded upon the principles of the Charter of the United Nations.

The first step was to establish and police a cease-fire, which happily is still in force. In an attempt to move ahead towards a constructive solution, the Council has declared the rights of the people of Kashmir to determine their own political future and has placed faith in the recognized democratic method of a plebiscite, to be conducted in conditions that would ensure a free vote without any coercion. However, the Council's efforts, through its Commission and its successive Representatives, to bring this about have not yet been successful, and we are again requested, this time by Pakistan, to take up the matter.

The Australian delegation enters upon this discussion with a deep sense of responsibility, for the people of Australia have followed this problem of Kashmir with great anxiety and concern. On of the most remarkable results of the United Kingdom's policy in terminating imperial rule in India was that it paved the way for a new relationship between Australia, on the one hand, and India and Pakistan, on the other. The Growing sense of our partnership with India and Pakistan in the Commonwealth has been a prominent factor in the minds of Australians in recent years, and today the Australian people

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are widely conscious of their close ties with India and Pakistan, ties that have been strengthend by personal contact, especially with the many young men and women who have come to study in our universities and colleges.

This conflict over Kashmir has grieved us, and, as is usual when one's close friends quarrel, we have not been eager to take sides. But we have endeavoured to understand sympathetically the issues at stake and to encourage an amicable settlement. The efforts of the Australian Prime Minister, Mr. Menzies, in this direction are well known, as is the work of Sir Owen Dixon, the United Nations Representative in 1950, and of General Nimmo, the present United Nations Chief Military Observer in Kashmir.

We Australians believe most sincerely that the continuing existence of this conflict can only bring with it evil effects for peace in the sub-continent, for the evolution of democratic government in the two countries, and for the economic development of Kashmir and the welfare of its people. The sole interest of the Australian Government in this matter is to do what we can, in the circumstances prevailing, to assist the parties to find a just and mutually acceptable solution of this problem.

We have listened most carefully to the statement made before the Council last week by the Minister for Foreign Affairs of Pakistan, Mr. Khan Noon [761st meeting], and to the detailed reply we heard yesterday and today from the representative of India, Mr. Krishna Menon [762nd to 764th meetings]. Both statements are extremely important and require the most painstaking consideration in the Council, and I can assure Mr. Noon and Mr. Menon that their observations and arguments will receive close and serious examination by my delegation and by the Australian Government.

Those statements exposed very clearly the complexity of the problems that had to be faced by the United Kingdom and by the political leaders of India and Pakistan in connexion with the transfer of sovereignty, the establishment of practicable systems of government, and the settlement of the delicate

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issues relating to the former Princely States. That there are limits to human wisdom and the capacity to solve such problems is unfortunately all too true, and is tragically illustrated by the situation in Kashmir. Nevertheless, one cannot but note that the achievements of both India and Pakistan in building their State are in part a reflection of the great measure of wisdom displayed by those who had to resolve the difficult constitutional and related problems that have been explained to us in these statements.

I am not all convinced that it would be desirable for the Council to take up in detail many of the particular questions of past history that have been ventilated by the representatives of Pakistan and India. The charges and counter-charges of conspiracy and aggression have been considered at great length by the Council in the past. It seems to me most important at the present stage to concentrate our attention upon the fundamental principles already recognized by the Council.

There is no doubt in my mind that whatever varying interpretations may have been placed by India or Pakistan at various times on the conditions to be fulfilled before a plebiscite should be undertaken, and whatever the course of action of these parties at various stages of the dispute, the Security Council has committed itself to the principle that the wishes of the Kashmiri people regarding their future should be established through a plebiscite under the auspices of the United Nations. As I see it, this is the view of the Security Council, as expressed in several resolutions, and it is my impression that the Council has in the past considered India and Pakistan as having accepted this principle.

Perhaps I should say in passing that Mr. Menon's statement, interesting and powerfully argued though it was, still leaves me in some doubt as to just where the Indian Government stands today in relation to this principle, and it may be necessary for us to go into this question at a later stage. But it has no bearing on the fact that the Council has been, and is of this moment, committed to the principle of plebiscite.

The Security Council also considered it necessary almost

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five years ago to record its view that any action taken in a Constituent Assembly in Kashmir to determine the political future of the people of Kashmir would not constitute a disposition of the State in accordance with this principle.

What view is to be taken, therefore, by the Security Council as to the significance of the deliberations of the Kashmir Constituent Assembly? I confess that is not altogether clear to me just what is expected to happen in Kashmir from a constitutional viewpoint on 26 January. I understand that the Constituent Assembly has adopted a Constitution for Kashmir, some of whose provisions were operative from 17 November 1956, and the remainder were to come into effect on 26 January. What is not completely clear is to what extent this represents any new step purporting to determine the future affiliations of the State of Kashmir and whether it is regarded by the Government of India as raising a new barrier in the way of a plebiscite in accordance with the Security Council's past resolutions.

I do not know whether the Government of India itself proposes to take any formal step to accept such changes as are purported to be made through this Constitution drawn up by the Constituent Assembly. It would seem to us that any such formal action would be in conflict with the past resolutions of the Council. If, on the other hand, the Constituent Assembly is merely going to dissolve itself on 26 January and celebrate the completion of its activities, the question remains as to whether those activities are regardd by the Government of India as having any bearing on the disposition of Kashmir and the question of taking a future plebiscite. If so, they would seem to us to be equally inimical to the Council's past resolutions on this subject.

In these circumstances, it does seem desirable to us that the Council, before going any further with its examination of this difficult and important problem, should draw the attention of all concerned to the Council's earlier decisions. For this reason, the Australian delegation has joined in sponsoring the draft resolution which is before us, and it expresses the hope that the Council will adopt it without undue delay.

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155. *Text of the Speech made by Mr. Krishna Menon (India) in the Security Council meeting No, 765 held on 24 January 1957.*

In conformity with previous practice of the representatives of my Government before this Council, I ask for permission, as I am entitled to do under the Charter, to offer my observations on the present state of proceedings before this Council.

I would like to preface my remarks by saying that one would consider that the purpose of speaking in an assembly of this kind is twofold. Sometimes the two purposes work together, sometimes one alone is possible. One purpose is to try and persuade your listeners in order that they might come to a judgemen: that is in conformity with the facts as one sees them. The other is for the purpose of registering a position so that at least at some future time, when considerations of a different character appear, the position will have been stated for the record. In the past my Government has not paid adequate attention to this because, as has been repeatedly said, our overwhelming consideration at that time was, without being punctilious, to find a settlement. Obviously, in this hard world that kind of thing has its penalties.

So far as the present situation is concerned, we have no right to pronounce on the draft resolution before the Council. It is the Council's resolution. It does not bind us. In fact, I suppose some day it will be communicated to the Government of India, which will in turn, in the normal course of business, communicate it to the Government of Kashmir and to the newspapers in India, because it is not a resolution in which we have participated. The Security Council invited us to present our views, and in the normal course of business one would have thought that a resolution on this subject would take into account the presentation that has to be made by the parties which are called before the Security Council. That was the intention of the Charter.

I have no desire to raise unnecessary controversies, but the first draft of the draft resolution was in my hands before I

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had not only not finished speaking, but in the forenoon of yesterday. The alterations that have been made are alterations which are more convenient and suitable to the other side. Therefore, any suggestion that I had stated my case on the Constituent Assembly and all they wanted to know had been made known, has not been borne out by facts.

I will not refer to private discussions, but I have here documents that have been circulated, and if other people can have them, I can have them. What did I say ? My friend Mr. Cabot Lodge expressed his appreciation of my having changed the arrangements of the meeting. What did I say ? I said the following :

> "I must confess that the atmosphere of crisis has been created, or some sort of D-Day or zero hour, for 26 January. But whatever may be the background which we are able to understand, we have the duty to point out what the facts are, and I have therefore decided to change the arrangement of my presentation" [763rd meeting, para. 79]—in order to show that there was not any kind of crisis or anything of that kind

Then I said the following at the end of the meeting, which the Council may well remember :

> "I do not think I would be able to finish my statement in another hour. It will probably take two to two and a half hours, even if I condense everything. The whole of the argument in this case remains." [*Ibid.*, para. 205].

No one can possibly comfort his conscience in this matter by thinking that the first paragraph of this resolution represents the facts when it says :

> "*Having heard* statements from representatives of the Governments of India and Pakistan concerning the dispute over the State of Jammu and Kashmir".

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While we are not in a position, nor do we desire, to move any amendments, alterations or anything of that kind, I would not want it to be thought in my country that I have not pointed out when this resolution was hatched and when it came out.

Before I go further, I should also like to enter the objections of my Government to certain statements in the Australian submission before the Security Council. I have already elaborated them in my previous statements and I do not wish to take the time of the Council any further with them. This alo applies to one other statement made in the Council : we are unable to agree to the two last sentences of the penultimate paragraph of the statement made by the representative of the United States [para. 50 above]. Those are specific matters to which I want to draw attention.

It has been put out that we are only reaffirming something and therefore are not doing anything new. With all respect, I should like to ask : since the whole burden of this argument was the reaffirmation, was a new decision—ignoring all those facts which had been presented during the eight hours—necessary ? If you come to a decision then you must reaffirm, you have decided on merits.

Therefore, while the Security Council, or those who sponsored this resolution or support it, can take that view, I submit that I am unable to take it. What is more, I have the responsibility to let the people and Government of India know that I have said in this Council that this resolution only takes care to remind us of those resolutions of the Secutity Council which we have, in express terms, declined to accept, that is, the resolutions of 21 April 1948 onward—I am not now referring to the resolutions of the Commission. Secondly, the principle embodied in these resolutions, whether it covers all the detail that goes into these resolutions or not, also is somewhat of a perplexing problems to us. The representative of Australia told us that he was still in doubt about so many matters, but that has not prevented him from coming to a conclusion. In this connexion, we are also likely to enquire in India whether it is

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necessary to reaffirm what, by implication in these speeches—in our opinion, erroneously—is regarded as an affirmed principles.

There are people who are likely to ask : has the Security Council no concern about the other principles it affirmed—that there should be no aggressions, there should be no changing of the conditions that existed in the country, of annexations, of affiliations ? The Security Council appears to be willing to sit long hours, even at night, in order to register its objections to what may appear in a Constitution, on the ground that it changes the existing status. But my people would enquire : why not at least equal anxiety in regard to other matters that change the status ? Why was not the Security Council concerned about the incorporation of a part of Kashmir into Pakistan by the Pakistan Constitution ? Why is the Security Council not equally concerned about the annexation of these territories, about the militarization of them, about the threats of war made in this room ?

I say all this not because you will change the resolution, because it was quite obvious that long before you had even called upon me to speak, on 16 January, the representatives of the United Kingdom and Australia had expressed their views as to what they would do. I referred to that in my opening statement yesterday.

These situations do produce some strange spectacles, on which I am entitled to comment because they are political matters. Here we have the representative of Her Britannic Majesty challenging an act of a legislature which has received the royal assent. This is a very unusual procedure. And we are acting in terms of an act of the legislature which received at that time—fortunately for us—the royal assent, and not after the termination of monarchy in India. Therefore, in doing what is being done, those people who are connected with those matters are not only challenging us but challenging their common law—because they have no constitutional law—their statutes, their tradition, and the power of the royal seal on a bill.

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Now we go further and look at what the Commission says—and I am not going to make a long statement. The Commission said (and I did not say this)—but why the resolution passed eight years ago should have such significance, while the investigations a of Commission appointed by the Council and reported seriously would not pass muster, that also would be incomprehensible to the peoples of India and that world opinion which is uncommitted in this issue to one side or the other—this is what the Commission said in paragraph 249 of its third report :

> "In essence, the problem of the withdrawals lies in the fact that the sequence for the demilitarization of State, as contained in the Commission's resolutions of 13 August 1948 and 5 January 1949, is not adequate to solve the present situation. The situation in the State has changed; the resolutions remain unchanged."

And you gentlemen today have thrown to the winds the caution that is in this : the situation in the State has changed; the resolutions remain unchanged. With great respect. I say you go a step further and you make sure that your resolutions remain fossilized, because you reaffirm them, preserved for posterity.

Now I must go to the position in the second paragraph. I want to say to you again, for the purposes of the record: this paragraph lacks propriety in respect to the Head of the State of the Kashmir, a member of the former ruling house. And I am again surprised that the representative of the United Kingdom should have put his name to it, because the Constituent Assembly in Kashmir did not emanate from the Jammu and Kashmir Conference The Security Council is a body of the representatives of State in the world and not of private organization. The representative of the Government of India has placed before it the constitutional document that deals with the question; then to affirm in the resolution that the Constituent Assembly proceeds from some resolution passed by howeher important a body it is, which has no place either in

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the Constitution of India or in its constituent unit in Kashmir, is I submit, a piece of impropriety. But we have no remedy, because you have the votes—I mean, the Council has the votes.

Therefore, I submit that this paragraph, in normal circumstances, is one that would not be passed by an assembly charged with this amount of dignity and this amount of deference to protocol. The Head of the State of Kashmir is entitled, in any case, to consideration as the Head of that State in the normal way.

Reference has been made to what my predecessor, Sir Bengal Rau, said in this Council, and I should have throught that his statement was sufficient to prevent the Security Council from repeating its previous action because, while it may be purposeless to say so—beause I have said it before—it is not the Constitution of Kashmir and the Constituent Assembly of Kashmir that make Kashmir integrated, as you call it, that make it a part of India. It is the act of accession under the act of a legislature which received the royal assent in 1947. Therefore, this Constitution is not what makes any difference, and if the Council is not prepared to accept the statement of the Government of India in regard to this matter about which I have spoken—that the act of the Constituent Assembly flows from accession—what the Council has to challenge is the accession; and I submit that the Security Council is not competent to do so.

Secondly, I desire to submit that this draft resolution refers not merely to the Kashmir Constituent Assembly. but also to the State of India, because these provisions, against which this Council is entering its caveat and proposing this interdict, are part of the Constitution of India incorporated by a Presidential Order in 1954. Therefore, this declaration by the Council now is not merely a declaration in respect of the Kashmir Constitution. The Security Council is telling India what it can have in its Constitution because if we are to follow this, surely we have to amend the Indian Constitution because the Security Council has asked us to do so.

I have heard a great many arguments in this building

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about domestic jurisdiction. I have myself on many occasions on behalf of my Government, taken the view that very few people can take shelter under domestic jurisdiction. But that the Security Council intends to give instructions about the Constitution of another country is the meaning of this declaration, for if the Constitution of Kashmir has to be interfered with, so has the Constitution of India.

Finally, I submit that the Constituent Assembly Act is what in law is called a declaratory act. It does not create anything; it simply affirms the existing state of affairs. And that is what Sir Benegal Rau told the Council. In fact, the Constituent Assembly of Kashmir could not bind the Union of India. If the Constituent Assembly passed some provision which was inconsistent with the Act of the Union, them that would be *ultra vires*, and no question of binding the Security Council by a resolution passed by a subordinate legislature, or even a national legislature, would arise.

I should like to read what Sir Benegal Rau said in 1951, which was six years ago, and my Government takes the view that in this case particularly, six years have changed a lot of things. At that time Sir Benegal Rau said :

> "rn effect, therefore, the revised draft resolution continues to ignore the basic facts of the situation in Kashmir, and it includes provisions which we have all along made amply clear that we cannot accept. For a peaceful settlement of the problem it is essential that a peaceful atmosphere should be created. The continuous and intensive propaganda in Pakistan for 'jehad', and the levelling of wild and baseless charges against India, hardly provide a suitable background. Nor is the periodic re-agitation of the matter and the constant reopening of closed issues calculated to promote a peaceful settlement of the question. India desires peace above everything—peace for the world and peace with all its neighbours. But there can be no lasting peace which is not based on fairness and justice." [528th meeting, para. 22].

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The only effect that this draft resolution can have, so far as our part of the world is concerned, is to re-agitate this question. It is contrary to the purpose of the Charter under which the United Nations is supposed to be a place for harmonizing conflicting interests. This merely sows the apple of discord once more. It makes no contribution to any settlement because, irrespective of any resolution, there are only two ways in which any settlement can be reached. One is imposition; and I submit that the United Nations has no power under the Charter of imposing a settlement. The other is by the agreement of the two parties. Therefore, today to record another resolution which reaffirms something that one party has rejected, reaffirms the large number of resolutions which we have rejected and which are eclipsed or absorbed by the resolutions of 13 August 1948 and 8 January 1949, is, in our submission, not calculated to promote the purposes of the United Nations or of the exercise by the Security Council of the tasks entrusted to it.

I have no doubt that those who submitted this draft resolution were moved by the highest motives. I have no doubt that they believe this to be a step towards what they think is a settlement. But my Government has not merely to look at the sentiment involved in this matter; it must also look at its implications and its consequences. I therefore wish to state that our attitude towards this draft resolution is the same as our attitude towards previous resolutions.

156. *Text of the Speech made by Mr. Noon (Pakistan) in the Security Council meeting No. 765 held on 24 January 1957.*

I have before me two pictures of Mr. Nehru and his Government; one painted by his representative here, and the other which I shall put to the Council.

According to Mr. Krishna Menon, Mr. Nehru and his Government have already gone back on their international agreements, have already annexed the State of Kashmir to India; it is already a *fait accompli.*

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According to the picture of Mr. Nehru in my mind, I think that he is an honourable man representing an honourable people, and, although he and his Government have not yet implemented the agreement to hold a free and fair plebiscite under the auspices of the United Nations, not once has Mr. Nehru made a public statement that he will not honour that agreement. In every statement of Mr. Nehru, which one reads in the papers, in Parliament, he has always said that hewould honour that agreement and that he would hold a free and fair plebiscite under the auspices of the United Nations.

Now, it is for the people of India to decide whether the picture of Mr. Nehru as painted by his representative here, or the picture that I have in my mind of Mr. Nehru as a gentleman, should be accepted by that great nation. Perhaps it will be a second occasion when Mr. Nehru will have an opportunity to disown what his representative has said here.

Mr. Krishna MENON (India): Mr. President, I did not rise to a point of order, because we in our country are accustomed to this. This is not a question of Mr. Nehru or of the picture anybody draws. It is a question of what is in the resolutions and what the issues involved are.

I am sorry, Mr. President, that you permitted this impropriety but, so far as we are concerned, there is not one word in the statements that I have made in this Council which can be interpreted to mean that we will not honour our international obligations. In fact, I requested this Council to act in accordance with the Charter in these matters. But each State Government is entitled to its own interpretation and, what is more, to draw the attention of the Council to all the circumstances and all the surrounding matters in connexion with it.

If this debate is going to go on in the way in which it has gone on in the last three or four minutes, then we are not proceeding in the way that we proceeded on the previous day.

I want to say for the purposes of the record that there is nothing that has been said on behalf of the Government of India which in the slightest degree indicates that the Govern-

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ment of India or the Union of India will dishonour any international obligations it has undertaken.

157. *Text of the speech made by Mr. Noon (Pakistan) in the Security Council meeting No. 766 held on 30 January 1957.*

It is not my intention to enter into a discussion of the various old issues that the representative of India raised in the course of his address. What the Security Council has before it is an agreement which was freely accepted by two Member States for the resolution of a dispute that is likely to endanger international peace and tranquillity. Issues like the question of accession or aggression by Pakistan or by India have already been discussed and disposed of by the Security Council at its 226th to 240th meetings, from 6 Jannary to 4 February 1948, and at the private meetings held on 7, 8 and 9 February 1950. The net result of the efforts of the Security Council and, subsequently, of the United Nations Commission for India and Pakistan, the various United Nations representatives, and the Governments of India and Pakistan themselves is available to the Council. The problem is how to go forward, since any delay in the holding of the plebiscite is fraught with grave dangers. The Government of Pakistan is most anxious to play its part in assisting the Security Council to reach a satisfactory solution.

The Government of India has categorically stated that it has no intention of dishonouring its international obligations —and in this connexion I quote from Mr. Menon's speech :

> "I want to say for the purposes of the record that there is nothing that has been said on behalf of the Government of India which in the slightest degree indicates that the Government of India or the Union of India will dishonour any international obligations it has undertaken." [765th meeting, para. 149].

I do not know what Mr. Menon thinks of this statement after the action recently taken by his Government in Delhi.

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The only international obligations which the Governments of India and Pakistan have undertaken in regard to the Kashmir dispute are embodied in the two resolutsons of the United Nations Commission dated 13 August 1948 [S/1100, para. 75] and 5 January 1949 [S/1196, para. 15]. I submit that it is now the duty of the Security Council to ensure that this international agreement is implemented without any further delay.

Before I proceed further, I would draw the attention of the Council to certain remarks which were made by the representative of India with regard to the necessity of adopting a resolution on 24 January 1957. The representative of India said: "I want to submit, therefore, that the whole of this crisis atmosphere which has been created about 26 January is just unreal" [763rd meeting, para. 141]. "The New York Times" of 26 January 1957 carried a news item dated from New Delhi, which said in part: "As far as the Indian Government is concerned, the accession of the State of Kashmir to the Indian Union became irrevocable today···India will ignore the resolution which was adopted by the Council Thrusday." I need hardly comment on these facts, which speak for themselves.

I should like to turn now to the address of the representative of India. Again and again, he has tried to impress on the Security Council that this dipute is not a dispute, that it was a "situation" which presumably was potentially dangerous enough to disturb international peace and security and, as such, was brought to the notice of the Security Council by the Government of India on 1 January 1948. The argument then runs some what like this: the "situation" still exists, but only because Pakistan forces are present in Kashmir.

The situation which developed in the Jammu and Kashmir State consequent upon the partition of the subcontinent is very well known to the Security Council. It was debated at great length in the Security Council in January 1948. Shall I recall the sub-human conditions under which the Muslims of the Jammu and Kashmir State hav e passed their miserable lives since the infamous. Treaty of Amritsar

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of 1846 sold them for half a million pounds, like goods and chattels, to the tender mercies of a foreign dynasty of Hindu rulers, whose statutes made the killing of a cow a capital offence and the injuring of a cow, even by accident, an offence punishable with seven years rigorous imprisonment? Shall I recall the feeble attempts at securing freedom that they made from time to time, and that evoked considerable sympathy for them, that is, the Kashmiris, in the hearts of all patriotic Indians. that is, of United India ? Shall I recall the great movement of 1931 that was supearheaded by thousands of their co-religionists from areas that now constitute West Pakistan, which took a heavy toll of human lives and resulted in untold suffering to the people of the State and extreme repression for those who sympathized with them? Shall I recall the glimmerings of a new hope in the people of the Jammu and Kashmir State when they heard that, consequent upon the partition of the sub-continent, they would get any opportunity to do away with the shackles that had bound them in an iron grip for so long ?

Shall I further recall the various steps that were taken by the Hindu Maharaja of the Jammu and Kashmir State to thwart the people's desire and urge for freedom, the comings and goings of the Hindu leaders from Delhi to the State on the eve of the partition, the free distribution of arms to the Hindus by t he Maharaja in the Province of Jammu, the invitation to the millitant Hindu gangs of Jan Sangh to establish their headquarters in Jammu, the organized massacre of his Muslim subjects which the Maharaja himself launched and which resulted in 237,000 Muslims escapings from the State for fear that they would be butchered ?

Shall I recall the heroic resistance of the people of the State, long before any tribesmen or other Pakistani nationals entered Kashmir, to this well organized genocide; the rout of the Maharaja's forces at their hands, his flight from Srinagar and his attempt to secure the military intervention of the Government of India to crush the resistance of the people ? Shall I further recal the cloak and dagger mystery of the fraudulant Instrument of Accession that was dispatched by

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air on the evening of 26 October 1947, accepted by the Government of India the very next day, on 27 October 1947, which brought in air-borne troops of India into the State on the morning of 27 October, the same day ?

It is a very sorry tale. It is not my intention to rake up the past and to parade it before the Security Council, because if I do so, it will only arouse passions and will not lead us anywhere. Suffice it to say that a situation likely to endanger international peace and security did exist. It was brought to the notice of the Security Council by the Government of India on 1 January 1948. It was brought to the notice of the Security Council by the Government of Pakistan on 16 January 1948. The Government of India cannot claim any special consideration on the basis that it was the first to come to the Security Council. Under the Charter, the Secretary-General of the United Nations could have himself brought the situation to the notice of the Security Council. What is relevant, however, is the fact. How did the Security Council react to it ?

In this connexion I can do no better than to more very briefly certain extracts from the proceedings of the Security Council.

At the 235th meeting of the Security Council on 24 January 1948, Mr. Warren Austin representative of the United States, said :

> "It seems to me that our advice to the two parties should be—and that is what they are asking for when they came here—that they proceed with the Kashmir matter, without prejudice to the other question; complete the negotiations that are now pending, and, with respect to the media and methods of creating those conditions in which a fair plebiscite can be held, arrange an interim government that is recognized as free from the smell of brimstone, as nearly impartial and perfect as two great countries like India and Pakistan can make it, in which the rest of the world will have confidence as being fair." [235th meeting p. 561].

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At the same meeting Mr. de la Tournelle of France said :

"Personally, I would suggest three conditions :

"1. The withdrawal of foreign troops from the State of Kashmir.

"2. The return of the inhabitants, irrespective of their race—Hindu or Moslem—to their places of origin in that State.

"3. The establishment of a free administration which would not exert pressure on the population and would give absolute guarantees of a free vote." [*Ibid.*, p. 263].

At the next meeting of the Council held on 28 January 1948, Mr. Noel-Baker, representative of the United Kingdom, stated :

"In my conception, infinitely the best way to stop the fighting is to assure those who are engaged in it that a fair settlement will be arrived at under which their right will be assured. In other words, as I remarked to the representative of India in our first talk after his arrival, in my profound conviction, a settlement arrived at quickly in the Security Council is the real way to stop the fighting. The whole thing, from the preliminary measures as to the fighting right up to the conduct of the plebiscite in the end, is all one problem. Only when the combatants know what the future holds for them, will they agree to stop." [236th meeting, p. 283].

Finally, at the 237th meeting on 29 January 1948, Mr. Tsiang, representative of China, observed as follows :

"It is obvious that the key to the problem lies in the plebiscite. If the principle of a free and impartial plebiscite for the deciding the all-important question of

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the accession of Kashmir to India or Pakistan should be accepted, much of the incentive to violence and the use of force would be removed.

"On the other hand, unless we restore peace in Kashmir, such a plebiscite would not be possible." (237th meeting, p. 288.)

It will be thus be seen that, at a fairly early stage of the debate, the Security Council came to the conclusion first that a situation likely to endanger international peace and security existed in view of the dispute between the Maharaja and his people, and subsequently between India and Pakistan over the question of the accession of the State of Jammu and Kashmir to India or Pakistan; and secondly that there was general agreement between the parties that the situation could be resolved only if the dispute was resolved by means of a free and impartial plebiscite. Has the dispute been resolved ?

The representative of India said :

"So long as there are forces of other countries in a place where they have no right to be, irrespective of our rights, I think the Security Council is called upon under the provisions of the Charter to act accordingly." (762nd meeting, para. 15.)

How naive. What is it that he wants the Security Council to do ? To serve Kashmir on a platter to him and India ? There is an agreement between India and Pakistan—a solemn international agreement—which lays down quite clearly the stages in which all foreign troops should evacuate the State. Why does not the Government of India implement its part of the bargain and withdraw its forces from the State under the terms of this agreement ? The Government of Pakistan is only too anxious to withdraw its forces from the State. The question that has been engaging the attention of the Security Council for the last eight years is how to persuade the Government of India to do what it had agreed to do. We on our part have accepted eleven proposals for the demilitarization of the State.

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It is India which has rejected all these proposals. Still the Government of India tries to show that Pakistan is remiss, while Indian actions are above-board.

In regard to India's conduct in negotiations with the Commission and Sir Owen Dixon, the United Nations Representative. I will cite a few quotations from their reports to the Security Council.

(a) In response to the Commission's truce proposals of 15 April 1949 providing for withdrawal of the entire Pakistan Army, the Government of India agreed to withdraw a very small number of its forces. According to the Commission : "This reduction was considerably less than had been suggested in the Commission's plan for the three-months period and in no case could be considered to constitute the bulk of the Indian forces."

(b) In response to the Commission's truce terms of 28 April 1949, the Government of India presented "its own scheme for the withdrawal of its forces." The Indian plan was, in the opinion of the Commission, "far from a fulfilment of India's undertaking under the terms of the 13 August resolution" to withdraw the bulk of its forces.

(c) Summing up the position with regard to the withdrawal of the forces from the State of Jammu and Kashmir, the Commission stated, "India is not prepared to withdraw such part of her forces in Kashmir as might be characterized as the "bulk, whether measured quantitatively or qualitatively, unless agreement with Pakistan on the large-scale disbanding and disarming of the "Azad" forces is reached."

(d) The Prime Minister of India rejected all proposals for the demilitarization of the State that were put forward by Sir Owen Dixon, the United Nations Representative

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for India and Pakistan. In his report to the Security Council dated 15 September 1950, Sir Owen Dixon said :

"In the end I became convinced that India's agreement would never be obtained to demilitarization in any such form, or to provisions governing the period of the plebiscite of any such character, as would in my opinion permit the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled." [S/1791, para. 52].

There are two minor points in the address of the representative of India to which I would allude briefly before I take up the next point.

Speaking about the Status of the Princely States on the eve of partition, Mr. Krishna Menon said :

"...It is quite true, as it is said in the Cabinet Mission's Memorandum, that they (the Princely States) were competent to discuss some other political relationship other than accession; that is possible. But they would not have been independent, like Colombia, Cuba, or France or any of the countries around here, because they had no international status." [762nd meeting, para. 26].

I am bewildered when I read along with this the policy statement of the Government of India made in this very forum by the late Mr. Gopalaswamy Ayyangar in January 1948, to which the representative of China drew the attention of the Council the other day. It reads :

"The question of the future status of Kashmir vis-a-vis her neighbours and the world at large, and a further question, namely, whether she should withdraw from her accession to India, and either accede to Pakistan or

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> remain independent, with a right to claim admission as a Member of the United Nations—all this we have recognized to be a matter for unfettered decision by the people of Kashmir, after normal life is restored to them." [227th meeting, p. 29].

It was insinuated in the address by the representative of India that the fact that the Security Council considered this matter on 23 December 1952, "which is more than four years ago, a fact which is not without significance", perhaps indicated, Mr. Krishna Menon thought, that there is no crisis developing in this matter. It is true that the case was last considered by the Security Council towards the end of December 1952. Thereafter followed a round of negotiations with the United Nations Representative for India and Pakistan and on his recommendation negotiations began between the Governments of India and Pakistan. It was not that, the case having been considered by the Security Council towards the end of 1952, everyone went to sleep over it. It is a pity that the representative of India does not recognize the efforts made by the United Nations Representative and the value of the strenuous efforts made by the Prime Minister of Pakistan to resolve this question peacefully in direct parleys with the Prime Minister of India in 1953, 1954 and 1955 in London, Karachi and New Delhi. He tries to brush everything aside by implying that, as the case was last considered in the Security Council on 23 December 1952 and has not so far been raised here since, it should be taken as settled.

Much has been made by the representative of India of the advice that I have said Lord Mountbatten tendered to the Indian Princes on the question of accession in his address to them on 25 July 1947. A copy of my speech is before me. The relevant portion dealing with this question is included in the ninth paragraph of my statement [761st meeting, para. 13]. The only quotation from Lord Mountbatten's address that I have used is given in that paragraph and was repeated by the representative of India himself. Lord Mountbatten did, however, advise the Princes to take into account the communal

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composition of their States in arriving at a decision regarding accession, as would appear from the same diary of an Englishman which has been quite copiously quoted by Mr. Krishna Menon. I recollect that Mr. Menon denied in his speech the fact that Lord Mountbatten had said that the communal composition of the States should be taken into account when deciding the question of accession. The quotation is from pages 357 to 358 of Mission with Mountbatten :

> "On 25 July, after prolonged efforts to achieve some unity of purpose among them, (the Indian Princes) Lord Mountbatten spoke to them in the Chamber of Princes for the last time in his capacity as Crown Representative. He took the initiative in advising them all to accede to one or other of the two new Dominions as the effective successor Powers to the British Raj.
>
> "The basic principle of Accession was that it vested in the personal discretion of the Ruler, since he was an autocrat. But it was recognized that this discretion should be qualified by the geographical contiguity of the State to the successor Dominion, the communal composition of the State, and a plebiscite if necessary to ascertain the will of the people".

That this position was also accepted by the Government of India there can hardly be any doubt. In its telegram dated 22 September 1947, more than a month before the acceptance by the Government of India of the spurious offer of accession by the Ruler of Jammu and Kashmir, the Government of India considered the acceptance of Junagadh's accession by Pakistan as an encroachment on Indian sovereignty and territory. It characterized it as, and here I quote from the Government of India's communication, "a clear attempt to cause disruption in the integrity of India by extending influence and boundaries of the Dominion of Pakistan in utter violation of principles on which partition was agreed upon and effected". The reason was that Junagadh was a predominantly Hindu majority State with a Muslim ruler.

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My authority for saying so is the Government of India's communication dated 21 August 1947 to the Government of Pakistan with regard to the accession of Junagadh to Pakistan. The Government of India said at that time :

> "This decision has created a very awkward situation for the Dominion of India. Both from the practical and administrative poi ts of view, geographical contiguity is the most important factor, and it was made clear by H.E. the Viceroy that it should be the main criterion to be followed by the State in deciding to which of the two Dominions they accede. Further, of the total population of 671, 719 in the State only 127,814 are Muslims; the State is thus a predominantly Hindu State, and an important decision like this cannot surely be taken by its Ruler without regard to the wishes of its peoples".

Again, in a telegram dated 26 September 1947 the Government of India, explaining the position of Junagadh to the Government of Pakistan, said in part: "The State has a population of approximately 671,000 of whom about 543,000 or 81 per cent are non-Muslims".

To say, therefore, at this late stage that the communal composition of the Princely States had no bearing whatsoever on the issue of accession is not at all tenable. Is it that a Muslim Ruler of a predominantly Hindu State had no option but to accede to India because that will of the people could be assumed to be in favour of such an accession, and a Hindu Ruler of a predominantly Muslim State had also no option but to accede to India because the will of the Hindu autocrat could be assumed to be in favour of accession to India, and the will of the people did not matter ? In other words, what India says is, "Heads I win, and tails you lose". Mr. Menon, in stating the legal position and policy of his Government with respect to the question of the accession of Princely States, was understandably silent about Junagadh.

The Indian representative took some time of the Security Council in explaining the circumstances in which a standstill

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agreement between the State of Jammu and Kashmir and India was not concluded. I must admit that the argument was not entirely intelligible to me. What is it that the representative of India wanted to convey to the Security Council? Was it that the State of Jammu and Kashmir approached the Government of India for a standstill agreement on 12 August, three days before the Government of India came into existence as a successor authority to the departing British ? If so, what does it show ? Does it show that the standstill agreement, which the State concluded with Pakistan, was being used only as a cover to lull the suspicious of the Muslim population of the State, while all the time attemps were being made by the Hindu Maharaja in collusion with the Government of India to stage-manage an accession of the State to the Union of India? If everything had been above-board, why did not the Government of India accept the offer of a standstill agreement ? The so-called accession of the State took place on 27 October 1947. Does the Indian representative mean to say that between 12 August and 26 October no one could physically leave the State of Jammu and Kashmir and go to Delhi in order to present his document of a standstill agreement ?

Then, it has been said that the Government of India bad a particular form for a standstill agreement, which included subjects like defence, and so forth. May I inform the Security Council that the form was common to the two successor authorities, and the telegrams from the State of Jammu and Kashmir to the Governments of India and Pakistan offering standstill agreements were couched in identical language. They read as follows :

> "Jammu and Kashmir Government would welcome standstill agreements with the Government of Pakistan (or India) on all matters on which these exist at the present moment with outgoing British Government. It is suggested that existing arrangements should continue pending settlement of details and formal execution of fresh agreement."

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This offer was accepted by Pakistan but was not accepted by India.

In his letter dated 1 October 1949 to the Chairman of the United Nations Commission for India and Pakistan, the Minister for Kashmir Affairs of the Government of Pakistan said, in part :

> "The Government of India, without making any reference to Pakistan which under the standstill agreement was responsible, *inter alia*, for the defence and external affairs of the Jammu and Kashmir State, flew in large forces to occupy and subjugate the State, thus entering upon a course of aggression against the people of Jammu and Kashmir, which is still continuing and which can only end with the complete withdrawal of the Indian armed forces from the State."

The purported accession by the Maharaja in 1947 did not, as Mr. Menon now argues, end the matter of Kashmir's accession. By accepting the resolution of the United Nations Commission for India and Pakistan of 5 January 1949, India accepted that the status of Kashmir remained to be decided. It remained to be decided not by India alone or by Pakistan alone or by the Government of Kashmir alone—it remained to be decided by the agreed method of a free and impartial plebiscite that should be conducted under the auspices of the United Nations. It was also decided, as far back as 5 January 1949, that no unilateral act by India or Pakistan would relieve the parties of the solemn international obligation to abide by or take whatever action would be necessary to give effect to the will of the people of Kashmir as accepted under the agreed plebiscite.

We are now told that in adopting its Constitution of 1950, India has made itself powerless to honour its commitments. Let us assume that the Constitution of India does make it impossible for one of the Constituent States of India to secede. It does not follow that Kashmir, the accession of which is now in dispute, could not accede to Pakistan. Mr. Menon,

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if I have re-read his statement correctly, carefully refrained from adverting to this point. Mr. Menon surely cannot contend seriously that a Constituent State, which Kashmir is not, could not change its status with the consent of the Union. India agreed to give any consent necessary for this purpose when it agreed to the plebiscite. But suppose the Constitution of India prohibits the Government of India from honouring its international commitments; can that be pleaded before an international body? Suppose India, under a Constitution framed by itself unilaterally, incorporated the State of Texas into India, what would be the legal implications? Would it be binding on the people of Texas?

The force of logic has driven the representative of India to the extreme position of now denying that India ever undertook to abide by the results of a plebiscite. It is here that I venture to believe that Mr. Krishna Menon has been carried away by his own rhetoric. Mr. Menon stated that the 5 January 1949 resolution uses the verb "will" rather the verb "shall" in the provision for the plebiscite. [763rd meeting, para. 70]. I am advised that these verbs even in private contracts are used interchangeably. As between Governments, the same is the case, the practice being to prefer the verb "will" as sounding more dignified, but certainly never to let one party or another slip out of the commitment it has said it will carry out. Of course, grammarians may remind us that "I will" corresponds to "you shall", just as "I shall" corresponds to "you will". But enough of this. No country, including India, could ever take this battle of "will" or "shall" seriously. Here I should like to make this remark. Suppose Mr. Krishna Menon were to say tomorrow that: I will destroy the international reputation of India and nobody shall save it. Now we, as friends of India, are not going to be really guided or misled by the use of "shall" or "will". We shall see what is really good for the international reputation of India and not whether Mr. Krishna Menon has used the word "shall" or "will" in that connexion.

The record is against the representative of India's argument that India never undertook to abide by the results of a plebiscite.

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First, in his letter dated 27 October 1947 to the Maharaja of Jammu and Kashmir, the Governor-General of India promised a reference on this question to the will of the people.

Second, in various telegrams which the Prime Minister of India sent to the Prime Minister of Pakistan and to which I have already referred in my opening address (761st meeting), the Indian Prime Minister categorically promised that the question of accession will be decided by a plebiscite of the people of Kashmir. Let me recall to the Security Council Mr. Nehru's telegram of 31 October 1947 to the Prime Minister of Pakistan :

> "Kashmir's accession to India was accepted by us"—that is, by India—"at the request of the Maharaja's Government and the most numerously representative popular organization in the State, which is predominantly Muslim. Even then it was accepted on condition that as soon as the invader had been driven from Kashmir soil and law and order restored, the people of Kashmir would decide the question of accession. It is open to them to accede to either Dominion then. Our assurance that we shall withdraw our troops from Kashmir as soon as peace and order are restored and leave the decision regarding the future of this State to the people of the State is not merely a pledge to your Government but also to the people of Kashmir and to the world."

These are the words of the great Prime Minister of India who, on 26 January 1957, dishonouring all these pledges, has annexed the State of Kashmir without consulting the people of the State.

Third, paragraph 1 of the 5 January 1949 resolution [S/1196, para. 15], which has been freely accepted by the Govrnment of India and is, therefore, binding on it, lays down that the question of accession of the State of Jammu and Kashmir to India or Pakistan will be decided by a free and impartial plebiscite to be conducted by the United Nations.

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Fourth, it has been understood all along in the Security Council that there is agreement between the parties that the question of accession of the Jammu and Kashmir State shall be decided by means of a free and impartial plebiscite.

Fifth, the joint communique which the Prime Ministers issued on 20 August 1953, as a result of the direct parleys which took place between them in Delhi, lays down categorically that the question of accession will be decided by means of a free and impartial plebiscite. The Indian representative took exception to my question as to whether his arguments represented the true picture in the mind of the Prime Minister and the people of India. I, in my turn, take exception to the suggestion that the 20 August 1953 communique was signed by the Indian Prime Minister with mental reservations. Yet, what business did any responsible member of the Government of India have in agreeing to appoint a Plebiscite Commissioner if the Constitution of his country forbade his Government from carrying out the terms of the plebiscite? What is it that Mr. Menon wants the Security Country to believe: that the Government of India was all along consciously misleading everyone with regard to its true intentions? Surely, as late as 20 August 1953, it was the official view that the Indian Constitution permitted the Government of India to fulfil its international commitments made to the people of Kashmir, to Pakistan and to the world through the Security Council.

The Indian representntive states that the resolution of 5 January 1949 is subsidiary to the resolution of 13 August 1948. How it is so has not been explained. The surprising part of it is that while he accepts all the provisions of the 13 August 1948 resolution of the Commission with regard to partial demilitarization of the State of Jammu and Kashmir in addition to paragraph 4(a) and (b) of the 5 January 1949 resolution of the Commission, which also deals with the question of demilitarization, he does not accept the validity of the other clauses of the 5 January 1949 resolution. We are in complete agreement with him that the plebiscite is not to take place until demilitarization has been carried out. Up to date, the ingenuity

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of the Indian side has been entirely concentrated on avoiding this demilitarization.

Mr. Menon now says that because no truce agreement has been reached, the obligation to hold a plebiscite failed. There is of course nothing in the agreement to support this position; but in seeking to avoid the obligation to hold a plebiscite, Mr. Menon would have the Council overlook the prior obligation to secure the demilitarization of the state. This prior obligation is still valid, but we hear nothing from Mr. Menon about it other than it has not been fulfilled.

When the direct talks between the two Prime Ministers were called off, long after the joint communique of 20 August 1953, the reason was not that the Prime Minister of India considered a plebiscite impossible. The reason as put forward by India was that the receipt by Pakistan of military aid from the United States of America had changed the situation.

I anticipated this excuse and most of the others mentioned by Mr. Menon and they are discussed in my opening statement. To the usual list, Mr. Menon has added the new excuse that an unreasonable period of time has elapsed since the conclusion of the international agreement. The representative of India now tells us that these excuses are "changed conditions" justifying the release of the Government of India from the obligation to co-operate in holding a plebiscite in Kashmir. Mr. Menon eschewed the Latin phrase he clearly had in mind—the doctrine *rebus sic stantibus*. This doctrine has never been applied by an international tribunal and indeed was emphatically rejected by the Security Council in another case which came before it in 1947. If the doctrine has any application at all, the circumstances that have changed must have been directly related to the obligation undertaken and present in the minds of those who incurred the obligation.

Mr. Menon has not met the burden of the argument he has undertaken of showing the necessary factual relation between the preservation of the conditions he says have changed and the obligation he seeks to avoid. To take only one example, he has not shown that the agreement to hold a

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plebiscite was made on the condition that a particular balance of force within the borders of India and Pakistan prior to and at the time of the plebiscite had to be maintained. Have the circumstance changed that were in the minds of India, Pakistan and the Security Council ? Has the geography of Kashmir changed ? Do rivers no longer flow into Pakistan ? Has the contour of the mountains changed making the State more contiguous to India or less to Pakistan than it was ? Has the communal composition of the State changed excepting in the province of Jammu ?

There also, paragraph 6 of the 5 January 1949 resolution of the Commission can restore the status quo ante. What is it that changed ? If more schools have been established in the Jammu and Kashmir State, more hospitals built there, more irrigation facilities provided to the people, more roads opened up for communication, do these changes lead one to the conclusion that the people of Jammu and Kashmir State should be denied the right of self-determination ? How does the agreement sound to the Security Council, that people should be denied their liberty because economic advantages have accrued to the Jammu and Kashmir State by continued illegal association with India ? Many more benefits than these had accrued to India itself under the British, but how did India itself react to them ? Did they not kill and shoot those benefactors in their effort to gain their freedom ? Why did Mr. Nehru prefer imprisonment ? He preferred freedom to these improvements.

And remember, the British only deferred freenom. The representative of India argues not for deferment of the plebiscite. The question of freedom for the people of Kashmir is closed, according to him, because of what ? Better roads and schools and lower monetary debts ? The Hindus were not alone in preferring self-determination. Their Muslim brothers also went to prison in the cause of liberty, as they are now suffering detention in Kashmir in the same cause. Muslims as well as Hindus will not sell their birth-right for a mess of pottage.

I beg to submit that there has been no change that

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impairs the imperative necessity of holding the agreed plebiscite. The Government of Pakistan maintains that the changes in conditions since 1949 are not such as to relieve either party from the performance of the obligations undertaken in agreeing to the resolutions of 13 August 1948 and 5 January 1949. The same position was accepted by the Security Council when it adopted the resolution of 24 January 1957 [S/3779], reaffirming those and certain other resolutions. I submit that there was never any difference between India and Pakistan over the objective in Kashmir. The objective has always been a free and impartial plebiscite to be conducted under the auspices of the United Nations, as was voluntarily agreed to by the parties under the terms of the 13 August 1948 and 5 January 1949 resolutions of the Commission. The negotiations broke down on the method and the scope of the demilitarization of the State preparatory to the plebiscite. To begin with, India said that it would not agree to any demilitarization programme that did not include in its purview the large-scale disarming and disbanding of the "Azad" Kashmir forces. Although the provision for such disbanding and disarming of these forces existed only in the 5 January 1949 resolution of the Commission, the Government of Pakistan, in a genuine effort to go forward, agreed to telescope the two stages of demilitarization into one. After this had been achieved by India, it dug in its toes on the question of the number of forces that would remain on either side of the cease-fire line. Since then, there has been no agreement on the question of quantum of troops.

I would therefore respectfully request the Security Council to go ahead with the consideration of the spectfic request of the Government of Pakistan that a programme of demilitarization should now be worked out which should make the holding of a free and impartial plebiscite possible.

There are many assertions in the statement of the representative of India which have, I submit, no relevance to the question of implementation of the resolutions of the Security Council. The Council will, I think, bear with me if I answer certain of these assertions in order that the record may be set straight.

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The representative of India has sought to make the Security Council believe that an invasion of the State of Jammu and Kashmir by Pakistan had begun long before the tribesmen entered Kashmir. In this connexion he said :

> "Even as early as 10 October, long before the Indian forces had been there, Pakistan had invaded the State of Kashmir." [762nd meeting, para. 75].

Irrespective of the fact that Pakistan had a stand-still agreement with the Jammu and Kashmir State and could, therefore, have sent its troops in with perfect justification, I would beg the Security Council to bear with me for a while and listen to the representative of India himself had to say about this matter in the course of his speech :

> "On 28 October 1947 it is recorded in a diary written at the time : 'In the middle of today's Defence Committee, Auchinleck rang up Mountbatten . . . from Lahore to say that he had succeeded in persuading Jinnah to concel orders given the previous night for Pakistan troops to be moved into Kashmir'." [Ibid., para. 85].

Expanding this theme the representative of India said in the course of his speech : "Mr. Jinnah gave his order after a conference held on 27 October 1947 at Lahore with Pakistan Army chiefs" (Ibid., para. 89).

Latter on, the representative of India got a little involved in his argument and said that the British Commander-in-Chief was able to persuade Mr. Jinnah to cancel his order for entry of Pakistan troops into the State. What is it exactly that the representative of India sought to make out ? That Pakistan troops entered Kashmir on 10 October, or that they entered Kashmir on 28 October; that the British Commander-in-Chief obeyed the orders of Mr. Jinnah and did not invade the State ? Why all this attempt to confuse when it is known that the Pakistan Army did not enter the State before May 1948 ?

At this stage I cannot but digress and say that we were probably remiss in our duties and functions in not ordering the

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Pakistan Army to enter the Jammu and Kashmir State in order to put an end to the reign of terror, the massacre and the wholesale genocide of the Muslim population of the State on which the Maharaja of Jammu and Kashmir has seemed to be bent long before he succeeded in his design to secure the services of the Indian Army to crush the resistance movement.

There is one other point which arises at this stage to which, I am afraid, I have to allude with deep sorrow. It is a pity that the representative of India has thought fit to ascribe under hand and not entirely honourable motives to the founder of our State, Quaid-i-Azam Mohammad Ali Jinnah, who is no more with us, Speaking about the attempt which the Quaid-i-Azam made to settle this dispute by direct negotiations, the representative of India said :

> "Mr. Jinnah invited the Prime Minister [of India] to go to Lahore, but he was unable to go owing to ill health. However, the Governor-General went, and what happened ? At that time discussions took place and it was said that both sides should call off their troops; that is to say, the Indian Army should be withdrawn and the raiders, as they were then called, should also leave . . . Lord Mountbatten asked the common-sense question of how Mr. Jinnah could be responsible for withdrawing the tribesmen if he had no control over them, to which Mr. Jinnah replied : 'If you do this I will call the whole thing off'." [*Ibid.*, para. 95].

I do not know where Mr. Menon got this astounding version of what the Quaid-i-Azam proposed. What actually happened was that the Quaid-i-Azam made a constructtve proposal for the solution of the dispute on the basis of complete demilitarization of the State and the holding of a plebiscite under the joint supervision and control of the Governors-General of India and Pakistan. Lord Mountbatten inquired as to what steps would be taken if the tribesmen, who apparently obey no one's authority, refused to leave the State, to which the Quaid-i-Azam *replied that if*, after an

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agreement had been reached between India and Pakistan and announced to the people of Kashmir, the triblesmen refused to leave the State, the Armies of India and Pakistan would jointly make war against them and force them to vacate the State. These were the words of the Quaid-i-Azam. I would request the Security Council to mark this. Was it or was it not the most honest and sincere approach for a solution of the Kashmir problem ?

Mr. Krishna Menon has tried to explain away India's rejection of the proposal of arbitration which was first put forward by the United Nations Commission and later on endorsed by the security Council in its resolution of 30 March 1951 [S/2017/Rev. 1]. The argument is that, to India arbitration was unacceptable because the Arbitrator was asked to say what he was going to arbitrate upon. I am afraid this was not so. The issues for arbitration were specific and clear. The issues were :

(1) Does the resolution of 13 August 1948 provide for the disbanding and disarming of the "Azad" Kashmir forces ? The Government of India claimed that it did, or that the matter had already been disposed of and could not be raised again. The Government of Pakistan contended that it did not and the matter had not been disposed of and could therefore be raised again. The Arbitrator was to decide whether this was so or this was not so.

(2) The Government of India claimed that Pakistan would have no say in the matter of the withdrawal of the bulk of the Indian Army from the State of Jammu and Kashmir. The Government of Pakistan, on the other hand, contested this claim and maintained that according to the assurances that were given to them and which formed part of the record of the United Nations Commission, the Commission was at liberty to hear the Government of Pakistan on that issue. The Arbitrator was to decide whether this was so or this was not so.

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(3) The Government of India laid claim to the northern areas of the State. The Government of Pakistan contested the claim and maintained that according to the terms of the agreement the Government of India or the State Government was debarred from sending any civilian or military officers across the cease-fire line The Arbitrator was to decide whether this was so or this was not so.

In other words, this was a dispute regarding the implication of the assurances of the United Nations Commission in regard to the international agreement on Kashmir. How could this be resolved other than by arbitration ? India's refusal to agree to arbitration clearly manifested its awareness of the weakness of its position in this matter. The only conclusion that can be drawn from this attitude of the Government of India is that it is not very sure of its ground. If it is, why does it not agree to arbitration over the points in dispute ?

The representative of India denies the gravamen of our charge with regard to the nature of the Constituent Assembly, and the so-called elections that were held for it. What does the representative of India deny ? Does he deny that the so-called Constituent Assembly was constitued in violation of the Security Council resolution of 30 March 1951, or does he affirm that the Constitution of this Assembly was in conformity with the terms of that resolution ? Does he deny that the Government of India itself violated the Security Council resolution of 30 March 1951—and now, that of 24 January 1957—in accepting the action of the Constituent Assembly, or does he affirm that India's action is in compliance with the resolutions of this Council ? What does he deny ? Does he deny that the so-called Constituent Assembly does not represent a good part of the State of Jammu and Kashmir, which is called "Azad" (Free) Kashmir, or does he affirm that the Assembly represents "Azad" Kashmir as well ? What does he deny ? Does he deny that no elections were held to this Constituent Assembly, or does he affirm that the elections were held and that votes were taken ?

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Does he deny that in the State of Jammu and Kashmir it is an offence to talk of a free and impartial plebiscite, or does he affirm that it is not so ? What does he deny actually ? Does he deny that as of date hundreds of people are suffering imprisonment, are denied civil liberties and government patronage, or does he affirm that it is not so ? What is it actually that the representative of India wants to deny ?

I have in my first submission given a picture of the state of affairs in occupied Kashmir. The representative of India has only high-lighted this fact by saying that there are only forty-nine political prisoners suffering imprisonment at this stage. The point is not whether there are forty-nine or 5,000; the point is that in an area which is groaning under the heel of an army of occupation, even according to the Indian admission—I do not accept it as correct, my information being that there are many more—there are at least forty-nine leaders, brave souls who had the strength of character to challenge this tyranny and expose the Government of India's game in Kashmir, who are in goal without trial.

Then the representative of India has said quite a number of things about the security of the State. He has said that various cantonments of the Pakistan Army like Jhelum, Abbottabad, Murree and Sialkot are at a stone's throw from the State of Jammu and Kashmir. These cantonments have always been there. The cantonments were located in these places in certain cases as long ago as the time of the Sikh rule in the Punjab, before the British came. What is it that the Government of India wants Pakistan to do about it ? Remove these cantonments to other areas and let the flank of Pakistan remain undefended ? Factually, the distances of these cantonments from the State of Jammu and Kashmir which Mr. Menon has given in his speech are incorrect. Abbottabad is well over fifty miles from the boundary of the State of Jammu and Kashmir. It was founded at the time when a man called Abbott was a General in the Sikh Army, before the British came. Murree is also over forty miles. Rawalpindi is still farther removed. What after all is the argument ? That because Pakistan's cantonments happen to be in Sialkot, Jhelum;

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Murree and Abbottabad, where they always have been and where they were when the Government of India accepted the resolution of 5 January 1949, the Government of India feels that in 1957 they should not fulfil their international obligation for a plebiscite in the State of Jammu and Kashmir because these cantonments are there.

The Pakistan Army is a force of which we are legitimately proud. However, its strength is nowhere even near half the strength of the Indian Army. As for the strength of the "Azad" Kashmir forces, let me say categorically that not one soldier has been added to the strength of the "Azad" Kashmir forces since the day that the cease-fire took place and became effective. The Pakistan Air Force has no bases in either "Azad" Kashmir or in Gilgit or in the northern areas. We have only two air strips in Gilgit and Skardu, both of which can receive no planes bigger than a DC-3. The air service to the northern areas is meant essentially to carry civil supplies and consumer goods. Mr. Menon has said that the length of these air strips has been increased up to 2,000 yards. Anyone with even the most elementary knowledge of these matters knows that the barest minimum length required for jet aircraft is well over 3,500 yards.

In this context Mr. Menon has also mentioned the air strips we have in Chitral. I am sure the Security Council will be surprised to hear that Chitral, a State which acceded to Pakistan in 1947, has been mentioned as a part of Kashmir. I shall not be surprised if that argument is sought to be enlarged a little further to include in Kashmir all the areas that now constitute Western Pakistan, Chitral was a State which acceded to Pakistan. The status of the State of Chitral has never been in dispute between India and Pakistan. Over the last nine years no mention has ever been made of Chitral in this forum. Only at this late stage has Mr. Menon seen fit to mention Chitral. Why ? This is anc ther attempt to confuse the issue, which, I must repeat, is how to secure demilitarization of the State of Jammu and Kashmir so that the international obligations of India and Pakistan are implemented without any further delay.

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Here I would like to refer to this question of air bases which Mr. Menon mentioned that we had up in the hills, in Gilgit, in Chitral and in Skardu. You can get into those little strips with civilian and medical supplies at a great danger to your life, because the hills are very narrow and when there is the slightest cloud you cannot land there. Only a person who knows nothing about air strategy can think that those little air strips are of any military value. We have very large aerodromes in the Pubjab and it takes a plane a very short time to cover the distance to these areas. So why should anyone be foolish enough to have these air bases in these dangerous mountains and think that we are keeping these bases in Gilgit and in Skardu in order to maintain bombers there so as to bomb Calcutta, Bombay and Madras. I really do not know where this strategy has come from. It is not necessary for us to keep bases in these mountains. We have these bases in the Punjab, and openly, from where the airplane can take off and go anywhere in India. Therefore, to bring out before this Council the fact that these little strips where we take medicine for our people are dangerous for the security of India is, to say the least, a very strange argument.

Mr. Menon said that his Government could not for a moment accept the principle of communal affiliations. He said that if his Government accepted this principle, it would have unfortunate repercussions; in other words, the Muslim minority in India would be exposed to bitter hatred and violence from the Hindus. In other words, Mr. Menon was conveying a thinly veiled threat, and this has been done before by the Government of India. The threat is that if Kashmir came to Pakistan, 35 million Muslims of India would have to pay for it and risk extermination. This argument, as many others of Mr. Menon, proves on examination to be spurious.

Mr. Krishna Menon himself says that Muslims in India are in a minority, a very sparse minority in most parts. Their total number makes a substantial figure, but 35 million interspersed with nearly 400 million Hindus form a very small minority in the country. Their case is not at all comparable to that of the Muslims of Kashmir, who form a solid conti-

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guous block with Pakistan, and it is only Muslims who were geographically so distributed as to come within the purview of the resolution that established Pakistan. Muslims who are a minority in India, like minorities in any country in the world, must necessarily be merged in the stream of Indian life. What constituted a problem before the partition was that the Muslims in the sub-continent—the expression that Mr. Krishna Menon does not like, but which, unfortunately, is the only one which correctly describes the area—were too large a minority to be absorbed in, or agree to be absorbed in, the body politic of India. Fortunately for them, they were in a majority in two definite areas that could be partitioned off from India; and Kashmir is geographically a part of one of these two areas of absolute Muslim majority.

Mr. Krishna Menon, in trying unnecessarily to tie up the question of the fate of the Kashmir Muslims with the safety of the Muslims in India, is threatening genocide, which has been declared a crime in international law. In saying that national passions will be inflamed in India if Kashmir goes to Pakistan, Mr. Krishna Menon contradicts his oft-repeated and oft-boasted claim that India is a secular State and that there is no feeling whatever among the Hindus of ndia against the Muslims; that they regard the Muslims as Indians and Indians alone, and acknowledge no racial or sectarian difference.

In threatening the Muslims of India, the Government of India is using a very dangerous weapon, and the Government of Pakistan would like to draw the attention of the Security Council to this threat. It is against the principles of the Charter of the United Nations and in direct violation of fundamental human rights, of which India is the most vocal champion. It is an unheard of thing in international politics that if a country has a quarrel with another independent country, it should wreak its vengeance on the helpless minorities in its own territory. There are today in the United Kingdom a large number of British subjects of Greek origin. It has never been thought of or contemplated by the British that, as a means of putting pressure on Greece, the safety of the Greek minority in the United Kingdom should be threatened. If any country,

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even on a very small scale, resorts to retaliatory measures against a minority in its community, it justifiably earns the opprobrium of the world. Therefore, I wish once again to draw the attention of the Security Council to Mr. Krishna Menon's very thinly veiled threat against the Muslims of India and their possible massacre by the Hindus, of whom Mr. Krishna Menon is a champion.

The representative of India has waxed eloquent over the secularism of India. Although the matter is completely irrelevant to the issue of holding a free and impartial plebiscite in the State of Jammu and Kashmir, may I also in passing say a few words about this so-called secularism of India.

(*a*) In "secular" India in 1953, 12,000 Muslims were reported to have been converted forcibly to Hinduism in Khadil Bombay by the Ary Samajists, which is a Hindu militant, religious, fanatical organization;

(*b*) On 22 September 1956, in "secular" India, Mr. N.C. Chatterji, President of the All-India Hindu Mahasabha, which is the second largest political organization in that country, and ten others, in a joint statement revealed that 50,000 non-Hindus had been converted to Hinduism during the last three years;

(*c*) In "secular" India, 386 communal riots took place since 8 April 1950, when the Prime Ministers of India and Pakistan signed an agreement giving protection to minorities;

(*d*) From "secular" India, through only one route, 60,000 Muslim refugees have entered Pakistan since February 1950, the date of the agreement above referred to;

(*e*) "Secular" India's paper "Sidq" reported on 24 December 1954 that the "result of the National Defence Academy examination held in June 1954 has been an-

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nounced in this month. The number of successful candidates is 129 which; as usual, does not include a single Muslim ! Along with this, another list of sccessful candidates for the Air Force, comprising eighty-eight persons has been issued. This is also all along "pure"—that is, it also does not include the name of any Muslim";

(*f*) "Secular" India's newspaper "Sidq" again reported on 26 August 1955 as follows : "Allahabad August 23rd : The result of the examination held by United Provinces Service (Political) and United Provinces Police Service has now been announced. It docs not include the name of any Muslim candidate".

Now, the United Provinces is the most highly enlightened part of India where the Muslim minority was always successful in competitive examinations, in very large numbers, during the British days; and today, in West Pakistan, and even in East Pakistan, one will see a large number of Muslims who had, through competition, succeeded in getting into the highest level of the civil service during the United India days, but who suddenly seem to have left it, and not a single one can get into the civil service now.

At least Mr. Krishna Menon cannot claim that no leader in Pakistan cares for the welfare of the minorities. It was as well that the representative of India himself referred to the concern of our Prime Minister for the minorities of Pakistan. The Constitution of Pakistan guarantees the same treatment to all its citizens exactly in the same manner as the Constitution of India. There is no difference between the two. That is, however, completely irrelevant to the issue which is before us.

Turning now to that portion of the representative of India's speech which tried to rebut the allegations of non-performance of India's obligations, which I cited it my opening address to the Council, I would refer very briefly to certain statements which Mr. Krishna Menon made. He said :

"It is true that India rejected the proposal for arbitration

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that was made by the Commission at that time." [764th meeting, para. 20].

Out of the charges which I made—and he seemed to give the impression that India has never rejected anything—I am quoting from his speech to show that he himself has admitted that India rejected those suggestions. The reasons which he gives, of course, are not worth the paper they are written on.

Mr. Krishna Menon said :

"For similar reasons, India objected to the Security Council resolution of 30 March 1951 [S/2017/Rev. 1], which gave Pakistan the right to be consulted, even in vital matters affecting the security of Jammu and Kashmir." [*Ibid.*, para. 28].

Here, again, he admits my allegation.

He said further :

"These proposals of General McNaughton failed to take account of our respective positions in this dispute and did not preserve the agreements of 13 August 1948 and 5 January 1949." [Ibid., para. 32].

Here, again, he agrees that India did not accept.

Mr. Krishna Menon then said :

"Sir Owen Dixon, now Chief Justice of Australia, went to India and to Kashmir and to Pakistan and he tried to establish, in the same way as General McNaughton did, a parity between India and Pakistan. What is more, he also brought in 'Azad' Kashmir as though it were a de jure Government, and he also tried to establish parity between the State forces and militia on the one hand, and 'Azad' forces on the other." [Ibid., para. 35].

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Sir Owen Dixon's proposals were consequently rejected by the Government of India. Mr. Menon admits it.

Mr. Krishna Menon has done us a service by reading out the account of the Commonwealth Prime Ministers' Meeting as recorded by the Prime Minister of India. I need hardly comment on it except to show my gratitude to him for bringing it out.

Speaking about the Security Council resolution of December 1952 [S/2883], the representative of India said :

> "Our answer to this is that while the Government of India could not accept a resolution which suggested a number of forces which in India's view was insufficient for security, the Government of India did enter into further negotiations with Mr. Graham." [764th meeting, para. 75].

Then the representative of India went on to assert :

> "Therefore, the charges of non-performance, in my submission, are wrongly laid at our door." [*Ibid.*, para. 77].

Need anyone comment on this ?

The representative of India has sought to claim credit for certain so-called concessions which the Indian experts committee is supposed to have made in the direct parleys that took place between the experts committees of India and Pakistan towards the end of December 1953. The record of these parleys from which he has taken out the figures which he quoted was prepared by the Pakistan delegation and approved by the Indian delegation. I have a copy of the record with me, and I would be only too happy to give it to the Security Council for its perusal.

The reasons why no progress was possible on the basis of what the Indian delegation had suggested in the course of those meetings was what the experts committees were not allowed to meet again. It was said by the Prime Minister of India that the receipt of military aid by Pakistan had changed

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the entire context of the negotiations and, therefore there was no further point in permitting those committees to reconvene. It is not that, the committees having met, the Indian delegation made a concession and the Pakistan delegation refused to accept it.

The record has so far been treated by the Pakistan Government as informal, on the request of the Indian Government, but since the Indian representative has seen fit to quote from it in his speech I think we are permitted to circulate it as an official document.

The representative of India has more than once alluded to the responsibilities and obligations of Member States under the Charter of the United Nations. May I, with due respect to him, quote for his information two Articles from the Charater. Article 2 paragraph 2 of the Charter requires that :

> "All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter."

Article 25 of the Charater reads :

> "The Members of the Unined Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."

Against these quotations from the Charter, may I set two questions from Mr. Menon's statement : "It is the Council's resolution. It does not bind us" (75th meeting, para. 120.) Again :

> "...I have the responsibility to let the people and Government of India know that I have said in this Council that this resolution only takes care to remind us of those resolutions of the Security Council which we have, in express terms, declined to accept, that is, the resolutions of 21 April 1948 onwprd." [*Ibid.*, para. 127].

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It is not my intention to weary the Security Council by rebutting all the irrelevant arguments that the representative of India chose to make in the course of an eight-hour speech. This does not, however, mean that I cannot meet all his arguments or that I accept the validity of those that I have not commented upon today. I propose to stop now and reserve my right to speak further should the occasion so demand or should the Security Council want me to clarify any point arising out of Mr. Krishna Menon's speech.

Pakistan brought two matters to the notice of the Security Council. One was that steps were being taken by the Government of India to integrate the State of Jammu and Kashmir into the Indian Union in defiance of various Security Council resolutions on the subject of this dispute, and in utter violation of the freely accepted international commitments of the Government of India. My Government is most grateful to the Security Council for giving prompt attention to the first part of our submission. The resolution of 24 January 1957 [S/3779] takes care of India's action in this regard.

My second point was that direct negotiations between the Government of India and Pakistan on the resolution of the deadlock over the question of the demilitarization of the State had failed to bear any fruit. It is surprising that the representative of India had hardly anything constructive to say with regard to the second point of our submission. He has completely ignored these direct negotiations and the result of their failure. I submit, therefore, that the Security Council should now take upon itself the task of resolving this deadlock. I submit that much the best way to do this is to introduce a United Nations Force in Jammu and Kashmir and call upon all forces of India and Pakistan to withdraw from the State, demobilize the local militia on both sides of the cease-fire line, and enable the people of Kashmir to decide in a free and impartial United Nations plebiscite whether they wish to accede to India or Pakistan.

Before I close my remarks I should like to refer very briefly to the incident which occurred at the 763rd meeting when I interrupted Mr. Krishna Menon's speech, for which I

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am very sorry. I was not aware of the practice of the Security Council. But the Council will recall Mr. Menon said that I had said in my statement that Pakistan was not bound by any international obligations—and there he stopped. I interrupted and said that was not the whole of my remark and that he had quoted only half the sentence. I am grateful to Mr. Menon for the fact that, upon that interruption, he read the whole remark which was to the effect that Pakistan is not bound by any international obligations regarding this case, except by the two resolutions of the United Nations Commission for India and Pakistan. Thus he had omitted to read the second part of the sentence : "except by the two resolutions of the United Nations Commission for India and Pakistan". That reminded me of the story of a young Mussulman who was one day chided by his priest in the mosque that he did not say his prayers regularly. The young man said, "But. Sir, it is written in the Holy Koran that one should not go near prayer". The priest was astounded, and said, "Bring me the Holy Koran". The young man quickly brought the Holy Koran to the priest, and showed him where it is said "Thou shalt not go near prayer". But the priest said : "Why don't you read the other half of the sentence, which says, 'when thou art in a condition of drunkenness'?"

158. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 766 held on 30 January 1957.*

I have listened with attention to the statement made by the representative of Pakistan; and the Council, in its wisdom and in accordance with its usual practice, would not expect me to reply now to that statement, which goes into detail and traverses some of the refutations that we have made. However, I should like to say at this stage that when the quotations—either attributed to my statement before this Council or taken from other documents—are placed in the context of the whole of the quotations I made in the Council, as they will be when I make my response, perhaps the picture that emerges will be rather different.

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I have no desire at all to refer to the various uncomplimentary observations about my country, because we are really discussing the question of Kashmir arising from the letter of the Minister for Foreign Affairs of the Government of Pakistan of 2 January 1957.

I have difficulties with regard to some of these matters also because there have been' references today to the procedures between some date in 1952 and the present time. This covers two procedures: one is the procedures with which the United Nations Representative was connected with regard to demilitarization, and the other is the procednre of direct talks between the Prime Ministers of Pakistan and India. The Council may remember that I referred to this latter question on the first day when I spoke. So far as we are concerned, any further discussion of the matter will require some clearance of documents. I have before me documents relating to the matter, but the markings on them preclude me from referring to them without proper authority.

Hence, with the consent and in accordance with the usual practice of the Council, my delegation before replying will make the proper study of the observations made today, as contained in the verbatim record which will be circulated by the Secretariat in due course, and will obtain the necessary instructions with regard to the questions raised.

I wish, however, to place it on record that many of the statements made with regard to our fellow citizens in India are of a character which we regard as extremely regrettable and, of course, are untrue. It is a matter of some pride for us that in our country the difference of faith has no effect either on liberty or on opportunity. I do not wish to go into this matter in a piecemeal fashion or to burden the Council with the general problems of India, which are not before the Council. In so far, howevet, as statements are made which are calculated to have the propaganda effect of casting a slur on the name of India, I must refer to to these statements in my next address to the Council—althoegh I shall keep such references to the minimum.

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I do wish to comment now on one matter to which reference has just been made. The Foreign Minister of Pakistan has said that, at the 763rd meeting, I referred to only part of his statement. As the Council well knows, the patience of representatives was already being taxed at that point, but when the Foreign Minister of Pakistan interrupted me, I read out the entire statement. I do not know whether my error was in being brief or in being long In any event, the document is before the Council.

I have no other observations to make at the present time, except that, subject to the Council's convenience and normal practice, I shall make my reply after having made the necessary preparations. It is my duty, so far, as I am able to do so, to enlighten the Security Counctl on these matters. Grave allegations and insinuations have been made to the effect that my country either is guilty or wishes to get out of some international obligation. We are not prepared to accept that position. Nor are we prepared to accept the position that, in regard to the State of Jammu and Kashmir, the only valid international agreements binding Pakistan and India—and here I refer not to contractual obligations, but to the context of the consideration of the present question—are the Security Council resolutions. Our two States emerged from certain sources common to us, sources whtch we accepted as the basis of our division. In this connexion, there have been misquotations of documents, to which I shall refer on a future occasion.

We shall also, I suppose, have to give the Council some information with regard to the refutation of facts—to take a trivial example, the length of runway necessary for a jet fighter to take off. Perhaps the Foreign Minister of Pakistan does not appreciate the fact that I have to deal with these matters. But facts of that kind have come into the picture a great deal in today's observations.

Questions have been addressed to the representative of India, and in that connexion I shall have to get clearance from the Government of India.

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159. ***Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 767 held on 8 February 1957.***

Although India is not a member of the Security Council, nevertheless, since I am the first representative other than the President to speak here since his assumption of that high office. I wish to tender to him the congratulations and the esteem of my delegation and my country.

I should also like to take this opportunity to express our tribute to our distinguished colleague, Mr. Carlos Romulo, a great Asian and a very old and trusted and valued representative here at the United Nations.

Before I address myself to the tasks which are before me this afternoon, I should like to ask the indulgence of the Council if I refer to a matter which, although no directly connected with the subject of Kashmir, arises from the proceedings last Thursday, 24 January, before this Council. On that occasion, the representative of the United Kingdom, in expressing his gratification with regard to the relations between his country and Pakistan and India, said :

> "Only the voice of envy would, I think, deny that the Englishmen, the Scots, the Welsh and the Irish—for, on a small scale, we too have our diversity—all those who served the Crown in the old imperial India and in the transitional period came to feel a deep devotion to the peoples among whom they passed their lives . . ." [765th meeting, para. 5.]

Not only do I agree with this statement, but I wish to refer to it now because, in the copy of the verbatim record which I have before me, the reference is to the "voice of India" rather than the "voice of envy". I am quite aware of the fact that my colleague from the United Kingdom and his mighty empire can take care of themselves. Nevertheless, since these words have been telegraphed all over the world, since there is so much bitterness and difficulty in the world as it is, and since

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this particular issue, in view of the virulent expressions of opinion in the British press, will create further and unnecessary reactions in India, as it has already done, I should like to this opportunity, if my colleague from the United Ringdom does not mind, since it is really his prerogative, to say that the correct version, and the version that most delegations heard—although some people heard it the other way—was "the voice of envy." I say this because I hope that this correction will go around the world in the same way in which the unfortunate other phrase did.

This afternoon, for the convenience of the Security Council, I should like to outline roughly what my Government intends to submit. And in order that the Security Council may be in a more patient mood—not that it was otherwise before—I should like to say at once that we hope and intend that this particular intervention of ours will be concluded this afternoon.

It is my intention within a brief compass to answer some of the statements made by my distinguished colleague the Foreign Minister of Pakistan. In doing so I shall not attempt to answer his statement paragraph by paragraph or line by line because that would be a very laborious and tiresome process and it would take the time of the Council unnecessarily. I also want to say that it is not my intention, nor the desire of the Government of India, to refer to the personal aspersions and in insuations in that speech because that would be of no interest to the Member States here and, since we are neighbours, I suppose we can take it. I therefore only propose to deal with those aspects of the matter which are directly related to this problem and it is only where the alleged conditions in India are cited as being relevant to the consideration of Kashmir in regard to discrimination and so forth that I propose to correct the impressions that have been created.

I said last time [766th meeting] that many quotations in the Forign Minister's statement, if either placed in their proper context or read with the whole paragraph or section of which it is part, would probably in the majority of cases bear a

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different meaning. That is the purpose of the first part of my intervention and I will try to make it as brief as possible.

The first of the series of allegations, arguments and contentions is with regard to the position of India in relation to Kashmir. As is well known Kashmir is—by accession, by the constitutional law of India, of Britain as things were then, and the recognized process of international law—an integral part of the Union of India. It is the contention of the Pakistan Government sometimes that this is not the case. Sometimes the contention is that this relationship was brought about by us by force and by fraud, and the purpose of refuting this is not merely that this mis-statement should not remain uncorrected but that it is basic to the consideration of the whole question, because it explains how our two countries got into the present position.

First of all, there was the use of force in Kashmir. India used force in Kashmir, on the territory of Kashmir, but to repel the invaders. The element of force which brought about or even perhaps speeded up the process of accession and necessitated the ending of the vacillation of the Maharaja of Kashmir has been rightly spoken of by the then Governor-General of India, Lord Mountbatten, who said that the accession had indeed been brought about by violence, but the violence came from the tribes, for whom Pakistan and not India was responsible.

As far as we are concerned, the fact which I would invite Member States around this table to bear in mind are : first of all, to see how we got in there. We got in there for two reasons: first to protect a neighbouring area which was invaded; and it is my humble submission that even apart from any question of accession, even apart from the Cabinet Mission Memorandum and even the partition of India—and will not refer to particular countries—if another small neighbouring country was similarly invaded it would be the duty of our country to go to its protection if asked; even if no other circumstances existed. What is more, in this particular case, the history of the last 100 years shows that the Power which ruled India—and we are the successor State—had always gone to the protection of the Indian

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Princely States when they were in trouble of one kind or another.

Over and above that, in this matter there was the fect of accession to which I have referred. It has been contended that this was brought about fraudulently. I want therefore to refer to the circumstances of force and fraud. It was contended on the last occasion that India became independent on 15 August 1947. Then what was the hurry for the Maharaja of Kashmir to ask for a standstill agreement on 12 Augurt ? The implications is that on 12 August there was already a conspiracy between India and the Maharaja in order to establish some relations. I am surprised, as the Council would be if it looked into the documents, at this particular statement. A document was circulated to members of the Security Council containing the telegrams that went from the Government of Kashmir to the Government of Pakistan and the Government of India, and in this document these telegrams bear identical dates, that is to say, they were sent on the same day. So if it can be questioned why the Maharaja asked for a standstill agreement with India three days before the independence, we could equally ask why the Maharaja had asked for a standstill agreement with Pakistan two and a half days before its independence—Pakistan was born half a day before us.

So there was here no attempt to force any position. Indeed, even if it had been the desire of India to bring about that act of accession, there would have been plenty of time before then to get things done. Indian troops could have been there on the same day as our independence was declared; there would have been a new Indian Government installed with the capacity to give orders without any British authority. So far as this is concerned I do not want to ask the Council merely to take note of the assertions and statements I make, but there is plenty of authority on this matter relating to the fact that India had made no preparation for armed intervention—and that authority is British authority.

There are published works on Kashmir, in the main hostile to us, being largely based on ignorance of basic facts, from

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which I propose to quote on this particular question. One of these is a book called *Danger in Kashmir* written by Josef Korbel, a Czechoslovak writer who was at one time Chairman of the United Nations Commission. Generally speaking his conclusions are not those which bring the matter up to date, but in this particular case he says :

> "Though there is here no direct evidence concerning the conversation between Mountbatten and the Maharaja, there is reason to believe that the Pakistanis are mistaken in their conviction that Mountbatten from the beginning connived with the Government of India to force the Maharaja and with him the State of Jammu and Kashmir into accession.
>
> Lord Mountbatten was very anxious to dispel any doubt about his own position. Speaking before the East India Association in London shortly after . . . he repeated, 'In the case of Kashmir I went up personally and saw the Maharaja. I spent four days with him in July [*sic*], on every one of those four days I persisted with the same advice : "Ascertain the will of your people by any means and join whichever Dominion your people wish to join by 14 August this year." . . . Had he acceeded to Pakistan before 14 August the future Government of India had allowed me to give His Highness an assurance that no objection whatever would be raised by them."—In fact the phrase we used was that we would not regard it is an act of unfriendliness.

The same thing appears in another work, again written by an Englishman who formerly belonged to the British-Indian Army and was on the frontier—and most of you know the view of officers of that time. The book on the whole is not favourable to us.

Lord Birdwood, a British writer on Kashmir, accepted the truth of this position, that is to say, that there was no fraud. Mr. Korbel has quoted Lord Birdwood to the effect that if we accept this, then we must refuse the Pakistan contention that

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there was some form of diabolical plot between the Maharaja and the Government of India to stage a situation which would precipitate accession to India. I shall not read out all these documents, because it will prolong the proceedings. I shall, however, read a quotation from Lord Birdwood, which is on page 59 of his book, *Two Nations and Kashmir* : "I stressed that there was no previous plot."

A document has been circulated containing the joint statement by the Chiefs of the Indian Staff of the Army, Navy and Air Force. This was in August 1947, when the Commander-in-Chief of the Indian Army was General Lockhart, a British officer. The Air Marshal was another British officer, Air Marshal Elmhirst. The Navy was commanded by another British officer, Rear Admiral Hall, who was lent to the Royal Indian Navy, as it then was. All of these people have categorically denied prior arrangements and made the following statement :

> "1, The following is true time-table of events, as regards decisions taken, plans made, orders given and movements started in this matter :
>
> "2. On 24 October the Commander-in-Chief, Indian Army, received information that tribesmen had seized Muzaffarabad. This was the first indication of the raid.
>
> "3. Prior to this date, no plans of any sort for sending Indian forces into Kashmir had been formulated or even considered. On the morning of 25 October we were directed to examine and prepare plans for sending troops to Kashmir by air and road, in case this should be necessary to stop the tribal incursions. This was the first direction which we received on this subject. No steps had been taken, prior to the meeting, to examine or prepare such plans.
>
> "4. On the afternoon of 25 October we sent one staff officer of the Indian Army and one of the Royal Indian Air Force by air to Srinagar. There they saw officers of

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the Kashmir State Forces. This was the first contact between officers of our Headquarters and officers of the Kashmir State Forces on the subject of sending Indian troops to Kashmir.

"5. On the afternoon of 25 October we also issued orders to an infantry battalion to prepare itself to be flown, at short notice, to Srinagar, in the event of the Government of India deciding to accept the accession of Kashmir and and to send help.

"6. On the morning of 26 October the staff officers mentioned in paragraph 4 above returned from Srinagar and reported on their meetings with officers of the Kashmir State Forces.

"7. On the afternoon of 26 October we finalized our plans for the dispatch by air of troops to Kashmir.

"8. At first light on the morning of 27 October with Kashmir's Instrument of Accession signed, the movement by air of Indian forces to Kashmir began. No plans were made for sending these forces, nor were such plan even considered before 25 October three days after the tribal incursions began."

It is true, as I have said, that we used force. But against whom did we use force ? We used force against the invaders—against those who committed rapine and murder. The force on the other side was used against the people of Kashmir, who were being aggressed against and who were being subjected to rapine and plunder and loot and arson. There was force certainly used by the two of us, parties who are now here. But so far as our force was concerned, it was used against the invading people and the other force was used aganist the population of Kashmir.

It does not require much documentation to understand this position. If the tribal forces, which at first numbered 20,000 and then increased to 73,000, according to the estimates, which came into Kashmir over this vast expanse of Pakistan territory, well armed and well equipped for these purposes, where libera-

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tors and were friends of the Kashmir people and if they had been wanted by the people, they would have been walcomed as liberators. The Indian Army was welcomed as an army of liberation. These other forces, however, were not so welcomed. They were regarded as enemies. They subjected the population as I stated the other day, to cruelty. When the country was rid of the bulk of them, the people were happier. It was not a question of our using force or fraud of any kind.

The Foreign Minister of Pakistan stated on 16 January [761st meeting] that eleven proposals had been put forward each of which Pakistan accepted and each of which India rejected.

It would be an imposition upon the Security Council for me to repeat what I said about this matter the other day [764th meeting]. However, since no intelligent appreciation of the present situation can be arrived at except by a study of these matters, I would merely like to say, to save the time of the Council, that the first reference to this matter appears in the statement by the Foreign Minister of Pakistan in document S/PV. 761, paragraphs 47 to 58, and that the answer made on behalf of India appears in document S/PV. 764, paragraphs 13 to 76. Therefore, in approximately thirty pages, which must run to about 8,000 or 9,000 words, we have examined and refuted and rebuted each of these allegations. There is only one on which it might be claimed that there is a qualified rebttal, and that is with regard to the issue of arbitration. We spoke at great length on that question, and, so as to save the time to the Council, I refer the Council to annex 36 of the third interim report of the United Nations Commission for India and Pakistan.

The position was that we were willing, to go to arbitration, but we were not willing to let the arbitrator decide on what was going to be arbitrated. That would be a travesty of justice and a denial of all the principles and rules of law. A lawyer, no matter to what system of jurisprudence he belongs, will say that it is not for the judge to decide beforehand what are the issues on which he is going to try the case except within

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the context of a case that is presented. That, therefore, is what we objected to.

The Government of India has all along, that is, from the beginning of this dispute when my predecessor, Mr. Gopalaswami Ayyangar, spoke here and on the last occasion when we met with the United Nations Representative, Mr. Graham, always maintained that it does not subscribe to may position which was *ultra vires* of the two resolutions of the Commission. We were prepared to examine any proposal within that ambit. However, it is not for a commission or a representative to go beyound that and form some new principle. That is why the use of arbitration was declided by us. I believe that a fair examination requires an understanding of the situation.

I am happy that, with regard to several of the answers I have given my friend from Pakistan either has accepted what we have said or does not think it worth while pursuing. This first relates to the massing of troops by the Union of India. It is not possible in our country, even in defence matters, to deal with things in secrecy. There is Parliament, there are questions in Parliament, there are newspapers, there are monies to be provided by budgetary drafts; but on a definite allegation that was made, I replied, on behalf of my Government, of which I have the privilege to be a member, with a categorical denial that there has been any massing of troops or any importation of new troops into Kashmir. Indeed, on the day when we were supposed to be preparing for this adventure, the more important generals of our army, as I said the other day, were playing a polo match in Calcutta. It may be that in some cases generals are not throught to be an essential part of an army, but our army requires them. So that has been pursued.

My Government asserts—not alleges, but asserts—that in that in the area under Pakistan occupation, which Pakistan has illegally, contrary to its own law, country to our law, contrary to international law, contrary to the decisions of the Council and contrary to the provisions of the Charter, incorporated in its Dominion, arifield capable of taking military planes have been prepared. I gave the measurements of these airstrips

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obtained from our own information—every Government has its own way of discovering things—and I said that some of them had runways about 2,000 yards long which had been extended. The answer of my colleague from Pakistan was that I was what I looked—an ignoramus—and therefore did not know what I was talking about. He said that it takes 3,500 yards for an ordinary jet plane to take off. First of all, I was not talking about luxury jet planes; I was speaking of fighter planes. In any case quite recently—and I am sure that the representative of the United Kingdom will not mind my mentioning this—that very beautiful plane, the Comet, arrived at Delhi at our airport there. We have only a 2,100 yard runway, but the Comet landed and took off again. There was no Indian rope trick about it; the Comet just landed and took off again under its own power.

We happen to know that the Pakistan air force consists of; we happen to know that runways are required for different purposes, and the strips of 2,000 yards they have there are cable of being used for the fleet of Sabre jets that Pakistan Government is now possessed of. Therefore, I make this correction for two reasons. First of all, one likes to be in the right when one makes a quotation. Second, the fact does remain that the area occupied by Pakistan is not administered by local authorities such as the United Nations Commission envisaged. Although it is an area where, *de jure*, the rights of defence and external affairs are vested in the Jammu and Kashmir Government and, therefore, in the Union of India, it has become a military outpost of Pakistan.

I shall not labour the point with regard to the distance of Pakistan military concentrations—not necessarily against us; but they are normally ones which, when hostilities or the contingency of hostility arise, become a matter that has to be taken into consideration; and my submission in reply to the contradiction of my figures by Mr. Firoz Khan Noon is that I am prepared—as I hope the Security Council will be prepared, and as I am sure Her Majesty's Government will be prepared—to rely on the ordnance survey maps of India, which are

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supposed to be very good. In fact, they are borrowed by a great many geography libraries in the world, and I am told that the British Government started them 100 years ago. The distances are indicated in air miles in the majority of cases, and sometimes thay are the distances by military roads.

My colleague has argued that all the facts I gave about the improved conditions in Kashmir were no answer for self-government or self-determination for the Kashmir people. As a principle, I could not agree more. It is an old maxim—becoming somewhat worn out in these days of collective States—that good government is no substitute for self-government. But that is not the issue here. What my Government was submitting was that, after having been hung up by the dilatory procedures which did not bring about the plebiscite, the Government of India, having the general responsibility for the economic, social and political development of its people, had introduced they necessary measures, and that certain results had been achieved.

Those things have to be placed side by side with the picture on the other side when we speak of a plebiscite. For example, if on one side there are open assemblies, free discussion, criticism, opposition and, what is more, 70,000 tourists going in from outside, while on the other sider there is no such thing and, what is more, even Pakistan itself has had no general elections, then, of course, there are two picture that are rather different. That is the only purpose of my putting this forward, apart from the fact that, in my humble submission, the application of the minds of the Member States represented in the Security Council to this matter would, as I shall point out later, have to be conditioned largely by the conditions in South-East Asia, by the fortunes of the people of Kashmir on either side, and by those of the peoples of India and Pakistan. I do not claim to speak for them in them in the same way that the representative of Pakistan spoke of the necessity of guarding our reputation.

There are two other points before I go into the main matter under this particular section. One relates to the Consti-

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tuent Assembly. That covers not only the speech made by my colleague but also the position taken up by the Security Council, and I beg representatives to listen to this very carefully. The Council, at its 765th meeting, passad a resolution [S/3779], and it is thought that it was repeating a resolution which it had adopted some time ago. My Government made the same statement that was made by my predecessor Sir Benegal N. Rau from the seat of India at that time. The Constituent Assembly of Kashmir did not establish any new relations between the Contituent State of Kashmir and the Union of India. It did not create anything. It was what the international lawyar calls a declaratory act rather than a creative act. As I say, it created no new relationship. That relationship had existed for a very long time.

I have said all this before, but there are two facts to which I did not draw the Council's attention. One is that—and here I speak from memory—somewhere about 1949 the Indian National Constituent Assembly decided to reserve four seats for the representatives of the Government of Jammu and Kashmir. Pakistan protested to the Commission that it was an illegal action, an action of our jumping the gun. We were, it was alleged, anticipating what was to be done by the plebiscite. We took the view, however, that we could not, under our Constitution, or, indeed, under the Declaration of Human Rights, deprive any part of a people of the rights that it enjoyed otherwise. So we went on in that way. Pakistan protested to the Commission, and that is what the Commission said :

> "In the Commission's view, it is difficult to oppose this measure of the Indian Government on purely legal grounds. The Commission did not consider there was any useful purpose to be served in approaching the India Government on this matter.

If this had been an illegality the Commission—which had meticulously gone into every point and had been very careful to remind us when ever we even suggested something that it thought was straying from the path—would have told us it

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was wrong. That was four or five years ago. There were no protests at the time, and therefore the relationship of a union to a constituent state was made.

In this connexion, may I say with all respect that, in our submission, the Security Council was misled into believing that on 26 January 1957 some act of annexation was going to be carried out. No annexation was contemplated. It could not have been contemplated or carried out, because, as the Prime Minister of Kashmir asked : "How can you annex your own country ?" This territory has already been part of India for a long time. I have before me the various dates in the progress of this Constituent Assembly, from 1944 onwards—in other words, long before there was a dispute over his matter. As I have already pointed out, the present phase arose from the proclamation of the Maharaja.

The Prime Minister of India has pointed out in a speech, and I believe has brought to the attention of the United Kingdom Government, that the challenging of the position of the Constituent Assembly was in fact the challenging of an act of Parliament—I said that myself here, but, of course, my voice does not carry the same weight as that of my Prime Minister. Thus, there was no crisis ; no annexation took place; and the Security Council has again been misled. As the Council is aware, it has also been misled with regard to Pakistan's intervention; in fact, it is because of that fact that this whole matter has arisen. And this is another occasion on which the Council has been misled. All that happened on 26 January 1957 was that the Constituent Assembly was dissolved.

I have been asked by my Government to submit the following to the Security Council. Let us assume, for the sake of argument, that the Government of India had undone the processes of the Constituent Assembly and had undone the work which that Assembly had carried out for a period of five years. What would have happened ? The entire financial integration of this State with India, the functioning of the Controller and Auditor-General of India, would have been thrown out of gear. The authority of the Controller and Auditor-

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General of India in respect to financing applies not only, to Kashmir, but to every State in India. Every State in India survives financially by means of subsidies from the centre ; that is our taxation system. The States have certain local rights of taxation, but their main expenditure is covered by subventions from the central revenues. In addition to the financial system, the entire judicial system in Kashmir would have gone to pieces. There would have been no courts, no high court judges : the judges are appointed by the President of India. There would have been no jurisdiction in the Supreme Court, in which is vested the power to enforce the fundamental rights of every citizen of India and from which every citizen can obtain a writ. The customs barriers which had been abolished, thereby contributing so much to the prosperity of Kashmir, would have been reinstituted. In various other respects the State would have been thrown into chaos.

Now, I have not made those observations in order to defend our attitude in this matter. We need no defence, because we have acted constitutionally and in terms of the United Nations Charter; we have not contravened any Security Council resolution. I shall revert to this question later. We only wish, in all humility, to say this to the Council ; in adopting the most recent resolution, the Council was taking a decision which, if we had been foolish enough to implement it, would have thrown the area in question and the 3.5 million people who live there into chaos. There are various popular ways of expressing this, but that is what I wish to submit to the Council.

Mr. Firoz Khan Noon, in his last statement [766th meeting] to the Council, made a large number of quotations, saying in each case that the quotation either proved his case, refuted something that had been said, or revealed that we had misstated the facts. The Council may remember that, when Mr. Romulo, who was then President, was kind enough to ask me to offer my observations, I said that when the extracts that had been cited by the Foreign Minister of Pakistan were fully quoted and placed in their proper context, the picture would be rather different.

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One of the quotations which Mr. Noon made in this connexion was the following :

> "In response to the Commission's truce proposale of 15 April 1949 providing for withdrawal of the entire Pakistan Army, the Government of India agreed to withdraw a very small number of its forces According to the Commission : 'This reduction was considerably less than had been suggested in the Commission's plan for the three-months period and in no case could be considered to constitute the bulk of the Indian forces'." [766th meeting, para. 19, (a).]

Now, I should like to read out the entire paragraph of the Commission's report from which Mr. Noon took the above-mentioned extract :

> "In response to the Commission's proposals of 15 April, the Indian representative (annex 20) said that the presence of thirty-two battalions of 'Azad' Kashmir forces was a factor which the Government of India had to take into account in determining the phasing of its withdrawals. He pointed out that during the seven-weeks period for the withdrawal of Pakistan troops, the Government of India could not, with due regard to the security of the State"—and the Government of India was responsible for the security of the State—"to the maintenance of law and order, and to the sealing-off of the border against unwarranted infiltration, withdraw more than twelve battalions. (This reduction was considerably less than had been suggested in the Commission's plan for the three-months period"—the period referred to now is seven weeks—"and in no case could be considered to constitute the bulk of the Indian forces). He wrote that further withdrawals would depend upon and would have to be regulated according to the actual disbandment and disarming of the 'Azad' Kashmir forces."

Thus, Mr. Noon's quotation gave only part of what had

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actually been said. I have before me a number of similar quotations by Mr. Noon, but I shall deal with only one other.

...

Mr. Noon said :

"The Prime Minister of India rejected all proposals for the demilitarization of the State that were put forward by Sir Owen Dixon, the United Nations Representative for India and Pakistan. In his report to the Security Council dated 15 September 1950, Sir Owen Dixon said :

" 'In the end I became convinced that India's agreement would never be obtained to demilitarization in any such form, or to provisions governing the period of the plebiscite of any such character, as would in my opinion permit the plebiscite being conducted in conditions sufficiently guarding against intimidation and other forms of influence and abuse by which the freedom and fairness of the plebiscite might be imperilled'." [766th meeting, para. 19, (d).]

Standing alone, this is a very stark statement. But the fact is that the whole of the discussion in question took place in the context of Sir Owen Dixon's saying : "If the plebiscite is not the method, we must try and find something else." That was not quoted by Mr. Noon, but it is what Sir Owen Dixon was saying. The fact remains that, according to Sir Owen Dixon, under the resolutions, India's agreement to the course to be pursued in these matters is a prior condition to the carrying out of the plebiscite [S/1791, para. 98]. It is therefore not as if something reasonable and *intra vires* had been put to us and we had rejected it.

I shall refer to only one more quotation, because, while I said I would not go into any matters of personal insinuations, the Foreign Minister did refer to a part of my statement in which I was supposed to have misquoted him. Had I done so deliberately, it would have been an offence for which I should

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apologize not only to him, but to the Council and to my Government. This is what Mr. Noon said :

> "Before I close my remarks I should like to refer very very briefly to the incident which occurred at the 763rd meeting when I interrupted Mr. Keishna Menon's speech, for which I am very sorry. I was not aware of the practice of the Security Council. But the Council will recall Mr. Menon said that I had said in my statement that Pakistan was not bound by any international obligations—and there he stopped. I interrupted and said that that was not the whole my remark, and that he had quoted only half the sentence. I am grateful to Mr. Menon for the fact that, upon that interruption, he read the whole remark, which was to the effect that Pakistan is not bound by any international obligations regarding this case, except the two resolutions of the United Nations Commission for India and Pakistan. Thus, he had omitted to read the second part of the sentence : 'except by the two resolutions of the United Nations Commission for India and Pakistan'.
>
> "That reminded me of the story of a young Mussulman who was one day chided by his priest in the mosque that he did not say his prayers regularly. The young man said, 'But, Sir, it is written in the Holy Koran that one should not go near prayer.' The priest was astounded, and said, 'Bring me the Holy Koran.' The young man quickly brought the Holy Koran to the priest, and showed him where it is said : 'Thou shalt not go near prayer.' But the priest said : 'Why don't you read the other half of the sentence, which says "when thou art in a condition of drunkenness" ?' " [766th meeting, para. 87.]

I will come to that in a moment, but let me just read what I said :

"The Minister for Foreign Affairs of Pakistan said that in regard to this Kashmir matter, he had no other international

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obligations than those that are to be found in the resolutions. I agree with that, but to a limited extent in the sense that we have to interpret this agreement in the terms of these two resolutions to which I have referred, but if it means that the international obligations of the Charter of the United Nations are not binding, then I join issue with him. I am prepared to confirm that I subscribe to the view that in the discussion of any procedure, of any particular decision, of any agreement reached, these resolutions are what are binding in the circumstances I have submitted to you. But it would be wrong, so far as we are concerned, for a Member State to argue that there are no other international commitments."—That is a truism.—"The Charter is a commitment for every State, and when the time comes to sum up these observations at the conclusion of these meetings of the Security Council, we shall fall back upon our bounden duty to ask all of you to address yourselves to the provisions of the Charter." [763rd meeting, para. 196.]

When the interruption came, Mr. Noon said, "I am sorry, but that is a misinterpretation of my statement." The President said that he had no right to interrupt, and I continued :

"I will read out the quotation. I thought that my not doing so before I could save time, but it will be seen that my slow procedure is the quickest in the long run. The representative of Pakistan said. . . ." [*Ibid.*, para. 199.]

I then read out the whole of the paragraph to which he has made very generous reference. Now we come to this quotation from the Holy Koran. The Holy Koran is the scripture for a very considerable part of our population, and it is held in respect by the remainder, and I regret that the quotation from it invited the degree of levity it did. What was the gravamen of the charge ? It was stated that I had quoted only a part of the sentence, but let us look at the Holy Koran itself. The

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representative of Pakistan said :

> "That young man said, 'But, Sir, it is written in the Holy Koran that one should not go near prayer.' The priest was astounded, and said, 'Bring me the Holy Koran.' The young man quickly brought the Holy Koran to the priest, and showed him where it is said 'Thou shalt not go near prayer.' But the priest said : 'Why don't you read the other half of the sentence' which says, "when thou art in a condition of drunkenness "?' " [766th meeting, para. 87.]

May I follow the example of this distinguished priest and read the whole of the sentence from the Holy Koran ? It states :

> "O ye true believers, come not to prayer when ye are drunken"—that is as far is it went in Mr. Noon's citation —"but wait till ye can understand what ye utter, nor when ye are polluted, unless ye be travelling on the road, untill ye have washed ye."

That is to say, let us not invoke moral laws unless we are prepared to use them ourselves, so that even in this quotation from the Holy Koran we have support of our position.

Now I come to the most important part of the statement made. I am not going to refer to the quotations and documents I have before me—I am going to put them all to one side—but I wish to deal with the alleged question of discrimination against the Moslem minority in India. Of course, this minority numbers nearly 50 million. In regard to this minority, various allegations have been made. It has been said there is no civil liberty in. India, there are frequent communal riots, and there is discrimination against the people of Moslem faith in regard to our public services. In fact, it is what may be called a captive or police State. I would not have referred to this, but for two reasons.

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First of all, it is of some importance, not only to my country but to the world, that we maintain a high level of parliamentary democracy, and to be told before the Security Council that these are the conditions is not so much a slur upon us as it is a disservice to this cause, particularly in our part of the world. In a country where, in the next month an electorate of 193, 129, 924 people are entitled to vote to elect 494 people to the Lower House of Parliament and 3,102 people to our provincial legislatures, using 200,000 polling stations and 2,960,000 ballot boxes for exercising their secret ballot, such a picture of a police State is far from the facts, but it is not so much in defence of our democracy that I raise this, but to point out that the argument was based on the statement that all these people in Kashmir are under our "occupation".

I was very pained to listen to two aspects of this question. I did not conceal from the Security Council the fact that we have a public security act, indeed, I could not, because it is discussed in Parliament. We hope that when our democracy becomes more established this law will become merely one of those things which do not operate, as it is in the United Kingdom, for example, under the emergency powers. But we have considerable problems of social order. We have had a background in our independence and in the aftermath of independence of communal friction. There are various other cases of subversion, bul as I said to the Council the other day [764th meeting, paras. 149 and 150], this act is exercised under very strict safeguards. A man has to be told what he has been arrested for, and he can go before a tribunal and make a representation. If the tribunal says that he must be released, then we have to release him. Over and above that, he can invoke the right of *habeas corpus*. But we cannot dictate to the courts that the high power writs such as *mandamus*, *certiorari* or *habeas corpus* should not be given. That is for the court to decide.

But, of course, our friends on the other side have legislation—I hesitate to say similar legislation—or ordinances for this purpose. Far be it from me to say that two wrongs make a right, but I think we must get some sense of proportion on this. Since Pakistan came into existence, imperfect as our information

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is, 251 political leaders have been arrested or detained without trial. These included Mr. A.K. Fazlul Huq, Governor of East Pakistan; Mr. H. S. Suhrawardy, the present Prime Minister; Mr. Ataur Rahman, the present Chief Minister of East Pakistan; Mr. Khan Sahib, a great veteran of the national movement and now Chief Minister of West Pakistan; Mr. Khuro, ex-Chief Minister of Sind; Mr. Kazi Fazi-ullah, ex-Minister of Sind etc.,—a whole list of Cabinet Ministers or ex-Cabinet Ministers. Then, of course, there is the great veteran Mr. Abdul Ghaffer Khan, well-known to the world as the "Red Shirt Leader", who had been detained for years without trial in spite of all the representations in friendliness that we made. In addition, dismissal from ministerial office has not been an unusual occurrence.

But in the Pakistan-occupied area of Kashmir, the present President of the "Azad" Kashmir Government, Sardar Abdul Qayum Khan, Chaudhury Hamidullah Khan, ex-Minister, Chaudhri Mohammed Akbar Naqqi of Mirpur—all these have been detained. There are a number of other cases, including 340 political workers who, according to the Moslem Conference memorandum to the Pakistan Constituent Assembly, were detained after the preliminary disturbances during which a large number of Poonchis were killed. According to the leader of the "Azad" Movement at that time, 130 are still in detention without trial.

I have read this out, not with any gusto, not with any pleasure, but it is necessary to see the perspective of the picture, and I confess that in infant democracies a degree of limitation on freedom, academically reprehensible, is sometimes inevitable, but there are considerable safeguards in our case because the law has to be re-passed by Parliament every six months.

But what grieved my delegation most was Pakistan telling the world that in our public services, in our Army and our various other public avenues of expression, religion was a bar. That would be unconstitutional and, what is more, under our law, would be punishable by imprisonment.

The Foreign Minister of Pakistan referred to the Public

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Service examinations. For a considerable time the head of the Public Service Commission in India—corresponding to the Civil Service Commission in the United Kingdom—was a distinguished Moslem. On account of ill-health he resigned. It is quite true, as has been stated, that no Moslem candidate was successful in the Defence Academy examinations for the Air Force held in June 1954, and in the United Provinces Civil Service examinations in 1955. I submit that is only another proof that we do not interfere with these bodies that are placed outside the administation in the interests of the community, even if our intervention is on the side of the angels. We could not go in any say, if a candidate is not according to the standard, that he is eitheir a Moslem or a Hindu or a Brahmin and, therefore, he must be taken. The examinations however, are on a competitive basis under the control of the Public Service Commission concerned, in the case of civil applicants, and under the control of the Union Public Service Commission and the Service Selection Board for entry in the National Defence Academy. A Moslem candidate was selected by the United Provinces Civil Service in 1954.

When we come to the armed forces, the following number of Moslems were commissioned in the armed forces in the last four years—and the number of commissions in each year is very small : in 1953, six ; in 1954, eleven ; in 1955, three ; in 1956, seven. So this does not show discrimination on the grounds of religion. But the most important thing in this matter is this. The results of the National Defence Academy examinations in 1954 have been mentioned and it is pertinent, therefore, to mention that the Commandant of the Academy is Major General Habib Ullah. That is not the name of a high class Brahmin; it is a Moslem name. He is a Major General in the Indian Army and he is the head of the Academy, and there are plenty of Moslems holding comparatively high offices in the Indian Air Forces, considering that it is a young air force—we have group captains, wing commanders, squadron leaders, occupying high offices. The same applies in the Navy.

Reference was made to communal riots, and I think it is

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important that we should give the facts in connexion with this. I believe that the facts given by the Foreign Minister of Pakistan are probably correct. Even if they are not accurate, we are prepared to accept them. There have been communal riots in India. It is to our lasting shame that the passions of our people are inflamed in the name of race and religion. Their guilt of the assassination of the founder of our nation casts its shadow on our history and will do so for a considerable time. We accept this guilt; but the question is whether it is due to the state of our organization and our administration. The fact is that there have propably been 350 communal riots in India since independence.

What is the position in Pakistan ? I am not talking about the whole of Pakistan, but only of Eastern Pakistan, where there is a Hindu minority of a considerable size. In 1950 the Prime Minister of India and Pakistan signed an agreement for the protection of their respective minorities. They decided to help each other and appealed to people on either side. Since that agreement was signed in 1950, there have been 8,021 cases of communal incidents in which the minority community were the victims, and these have been brought to the notice of the East Pakistan Government. As many as 1,762 of these involve offences against women. Members of the minority community have been leaving their hearths and homes and migrating into India after being discriminated against and seriously concerned about their honour and security. The following are the migration figures : in 1955, 239,031 people came from Pakistan into India, leaving their Pakistan homes—and I have the figures here month by month ; in 1956, beginning in January, were 19,206, and in August, 47,065. I have not the figures for the latter part of the year but, since India became independent, 4 million members of the minority community have come over from East Pakistan to seek refuge in India ; and we have given them asylum.

I propose, since I do not want to take too much time, to circulate for information an account of this exodus, published in the "Manchester Guardian", which finishes by saying : "Pakistan is playing with fire. By comparision, Kashmir border

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incidents are not even flickers." We regret this. In India we do not make much of this matter because one way to add to communal fury is to give too much publicity to this information. I regret that this has been drawn out of us. We do not say this with any gusto. We take our share of guilt. We say that our country is still not living up to its standards either of non-violence or of respect for other people, religions, races or communities. But the penalties imposed are severe; the vigilance exercised is considerable, and the propaganda for eliminating the cause of the friction is country-wide. Now, this is half of Pakistan—much less than half its area, but more than half its population.

Those are the facts that were put out and on which I thought I should enlighten the Security Council as to how far they are right or how far they are wrong. It may be asked, why should the Government of India take the time of the Security Council in order to deal with matters that are largely the domestic concern either of Pakistan or of India? The reason is very simple. Because the basis of the Pakistan "claim" is that Kashmir is populated by Moslems and for some reason. which is beyond the United Nations Charter, extra-constitutional, extra-legal, by some primordial rights, these people really belong to the other side, irrespective of all legal and other arrangements that are made.

We are proud of fact—a fact which my colleague described—that we are a secular State. We make no differences between different religions. There are 5 million Roman Catholics in India and we have had no difficulties, and I hope that they have not had any. We have not heard of any. And that is the position. That completes my answer to the statements that have been made.

The next part of my intervention in this matter is to deal with the situation we have before us. I said the last time that the so-called Jammu and Kashmir problem that is before the Council has arisen as a result of a complaint which in substance is of aggression or of invasion, because abetting a crime is the same as a crime or participating in it. You can be an

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accessory before or after the fact—a description not known to English law but known to other systems. So that was where it began. Two answers have been given and two thoughts are in the minds of the members of the Security Council.

One is what Mr. Tsiang referred to the other day [765th meeting, para. 66] : that the Council decided to by-pass the question of aggression. I have been at some difficulty in trying to deal with this matter because we have no desire to enter into controversies with members of the Council. We are invited here to state our case and I hope that I will not say anyting that infringes upon your status as members of this august body. But I do not know what "by-pass" exactly is intended to mean. By-passing means not traversing that region. That does not mean that the region does not exist. A by-pass is usually a short-cut to your goal. If you cannot get to that goal because some trees are across the road or because the road has fallen away, then you have to go back to where you started from and go along the normal road. Therefore, even taking this "by-passing", it does not constitute any kind of non-existence of this fact.

I refer the Council to the various statements that have been made in the following order. First, there was a set of statements at the beginning of this difficulty. Then Mr. Gopalaswami Ayyangar, Sheikh Abdullah and others made statements before this Council, and each time a proposal was put forward they entered a caveat and said "our original complaint is this : we do not move away from there ; we are prepared to consider other matters.". This process has been repeated in the whole proceedings of the United Nations Commission for India and Pakistan. The sovereignty of the Jammu and Kashmir Government has never been questioned. That is why Pakistan has never been given a place in either the plebiscite organization or anything of that character, or indeed in the Government of the occupied area, which was supposed to be given to the local authorities. (Although I have the papers here, in view of the time, if you will permit me, I will not read them.) From the very day we brought this complaint and on each subsequent occasion when Sir Benegal Rau, a member of this

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Council, spoke on this matter several times, we have emphasized this point. This was one of the main difficulties in dealing with general McNaughton, because we thought the procedures suggested—not adopted, suggested ; they were only suggestions —by both General McNaughton and Sir Owen Dixon were *ultra vires* of the resolutions of the United Nations Commission for India and Pakistan, because those resolutions accepted something as basic. And we will come that in a moment, because I have to deal with it fully according to the instructions of my Government.

Then came the period when we were in negotiations, and proposals of various kinds were made by Sir Owen Dixon and afterwards, by Mr. Graham. I ask the Council to look at the five reports of Mr. Graham. In each of these, there is mention of the position we have reaffirmed and they are set-forth categorically as our position. We have never withdrawn from the position that the problem before the Commission is one of invasion. That arises from the fact that Kashmir is an integral part of India and it became a part of India by law, by the right of protection, and by the desires of the people as far as we could ascertain them. The question was asked of me yesterday, by a very good friend, a person for whom I have a very great regard : If this were so—he used some other words which are not very parliamentary—then why in the world did you suggest a plebiscite ?

I want to make this very clear—it is a little bit abstruse probably—: the accession is complete. But it is possible for any sovereigh Government to terminate an accession after the accession and the incorporation in law and in fact of the territory acceded. And if you will read the original complant what does it say ? It says that if we are to meet this aggression effectively we would have to invade Pakistan. This is an ordinary elementary problem of military science, I am told —I am not a military man—, and we said, this is what we do not want to do ; we do not want this to develop into an international war between us, which may have other consequences. We warned you to ask Pakistan not to give succour

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and aid, not assist the invaders, and so on. Therefore, we came here.

With regard to this whole question of a plebiscite, it was not a plebiscite in the beginning ; it was what is called a reference to the people, ascertaining their wishes or something of that character; no particular form was given to it. It arose from our own voluntary statement, originally addressed to the Ruler, an engagement between ourselves, our consciences, and the peoples of Kashmir. But, at any rate, its relation to accession is this : any discussion, any resolutions, any statements here as our common desire to finally decide this matter by plebiscite is not eitheir in law or in fact or in political argument, in reality or in truth, any admission or any belief founded upon an idea that there is such at hing as temporary accession. The accession, it is true, can be terminated by our sovereign will. It is possible for any sovereign State to cede territory. If, as a result of a plebiscite, the people decided that they did not want to stay with India, then our duty at that time would be to adopt those constitutional procedures which would enable us to separate that territory.

That is what is likely to happen in regard to the French possessions in India, where by friendly negotiations, these small territories have been transferred to India *de facto*, under Indian administration. Some day they will be transferred *de jure*. We cannot ignore the constitutional procedures of France. When the time comes, there will be a treaty which cedes in law and then it will no longer be French territory. And here I am not revealing any secret, because it is part of published news, but neither they nor we are rushing this matter because there is no need to do so. It was all done in a friendly way. Therefore, when we offered a plebiscite, or rather suggested a plebiscite, we had these things in mind. First of all, we wanted to find ways and means where the spreading of this conflict could be avoided and bloodshed could be done away with. Secondly, we were prepared to accept a test. Now a test does not in any way argue that the union does not exist. But we were prepared to put the union to the test.

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A member of Parliament or a government may be safely in office. They may even have a comfortable majority. They may be challenged in the country on a particular issue. Then they may take it into their heads to go to the country and ask for a mandate. There is no obligation for them to do so. The fact that they appeal to the electroate does not mean that it is an illegal government. It simply means that if the mandate goes against that government, it ceases to be a government. Therefore, it is wrong to argue that because a plebiscite was suggested this becomes diputed territory—and the word "dispute" occurs in no resolution of the Security Council to which we are parties. I will come to that later.

Therefore, what was possible, if there had been a plebiscite, would have been the termination of that state of affairs. The termination of that state of affairs is not to argue that it did not exist. Those are two widely different propositions, and they go to the root of this matter. If that were not so, then the action of Pakistan would not be the invasion of our sovereign territory. Then the Security Council would have to wonder: what is the Council considering? What was Kashmir? Was it, in the terms of Mr. Rajagopalachari, a former Governor-General of India, an elder statesman, a no-man's-land? It could not be because it was among the 562 States that His Majesty's Government in the United Kingdom listed, and with whom His Majesty's Government at that time had friendly treaties. What is more, up to 15 August 1947, the Maharaja of Kashmir, according to the practice from the time of Queen Victoria, presented four Kashmir shawls to the Sovereign of Britain. So it was an integral State and, as you will see in this matter all along, there had been great pains to maintain this position. We came here for that reason. This fundamental position has not altered.

It is not as though we were the insurrectionists in 1947. I request the Security Council members to read every assurance, every resolution, even the summaries made by Mr. Graham, where the position of India on this matter has been consistently maintained. The Prime Minister himself, who has been dealing

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with this matter as Minister of External Affairs, has definitely maintained our position right along and not illegally, as you will see when I come to discuss the resolutions.

The second link or charge or rebuttals is ; "Yes, you had a complaint of aggression"—this is what Mr. Tsiang told us—"and they had a counter-complaint. One cancels the other." I have a great respect for Mr. Tsiang's mind and his intelligence. This has nothing to do with our recognition or non-recognition of Nationalist China. Personal relations and regards must continue. I have read practically everyting he said on this subject. Much of it is extremely cautious.

My Government would not be prepared to accept this statement or any argument put forward by Mr. Noel-Baker—who was my teacher and who I probably know better than anyone else in this room—as an axion of international law in this matter. Mr. Noel-Baker himself denies it, because he starts from one principle or from one objective. He says : "The fighting has to be stopped. Find anything that will stop the fighting." That was his attitude. Secondly, to quote Mr. Noel-Baker in this particular way is to quote the counsel for the prosecution. Though we are not the defendants in this matter, it would so look. You know, our people find it very difficult to accept that. We come here with a complaint of invasion as complainant, and all along the Security Council in its proceedings puts into the position of a defendant. We are not prepared to accept that.

Let me return to Mr. Tsiang because what he said represents not only his view but either the expressed or unexpressed view of many others, I thought I had answered him the last time, but my capacity for expression and for conveying ideas seems to be extremely limited.

There was our complaint of invasion. The answer was : "Yes, you had a complaint of invasion. They had a counter-claim, and that counter-claim washes this out." Now anyone who is accustomed to reading documents and who examines this objectively will find that this argument does not bear examination. What did we complain about ? We complained

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about what was virtually the invasion of Kashmir, whatever words we used. And after concilitation efforts on our part failed, we invoked Chapter VI of the Charter. What was Pakistan's reply ? It was a long document [S/100, annex 6] of three sections, the greater part of which had noting to do with Kashmir. It went so far as to charge us with genocide and a lot of other things. Pakistan charged us with not having proper economic relations with it, and I suppose that, if the time had been given, perhaps it might have been said even with their survival. So the so-called counter-claim consists of a very large number of other matters.

Let us assume for argument's sake that these other matters might have some value. Apparently the value of the document, so far as the Security Council is concerned, is to be judged by the fact that the Council decided to put it on the shelf. The Council has not considered it since. But whatever that may be, with regard to Kashmir, the only answer is contained in paragraph 3 of the document which I quoted to the Council befcre [S/1100, annex, 6 document I]. It is in the documents. What does it say ? We alleged invasion and Sir Mohammed Zafrullah Khan denied it ; that is, he has said not that the invasion was right and not that it was not an invasion. The Pakistanis did not say : "We are going to our own territory". They did not say : "We are not going to Indian territory." They did not say : "We have not invaded." The answer was not any of these things, but that they were not there. Therefore, the answer was a denial.

If that denial had been substantiated by facts—not by facts that we adduced but which the Commission adduced, and therefore the Security Council adduced—then that denial would have had value. But the facts are otherwise. Pakistanis were found there. We found them. Our generals went to cocktail parties with them. They were part of the same army. We soon found out they were there. General Tariq, who was Akbar Khan of the Army, had taken off his shoulder straps and had become the leader of the commandos. Of course they denied that there was an army. At any rate, later it was

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admitted. What is more, at earlier stages of the invasion, starting from 10 October, during the period of Major General Scott's diary and later up to October and November, Pakistan was guilty of invasion of our country. It committed the crime of depredation upon the sovereign territory of India, of a neighbour which was trying very hard to live on good terms with it, a neighbour which, for the price of our common independence, had admitted to the sundering of our territory. I will come to our relations in the future.

Therefore, the anwer to the complaint, say, with respect to Mr. Tsiang, is not a counter-claim that washesout the matter. It is not a plus and a minus and is a denial. If that denial is disproved by the Security Council, what is the desideratum ? The aggression, nothing else. Pakistan's case was not "we have a right to go there", but "we did not go there".

An argument was adduced by the Foreign Minister of Pakistan at this stage in the Council on grounds, I am sorry to say, that will not stand examination. What did he say ? He said that the Government of India, not only by accepting accession but by sending troops to Kashmir—abount which I read General Lockhart and Air Marshal Elmhirst's story—commited aggression. Why ? Because the Maharaja of Kashmir had made a standstill agreement with Pakistan and the standstill agreement, according to Pakisian, is a kind of semi-accession which gave it sovereignty. But unfortunately for the Pakistan argument, Sir Mohammed Zafrullah Khan, speaking before the Security Council, said that this standstill agreement was in regard to communications and post offices and what not, and he did not say that it included the rights of defence and external affairs. But assuming it did, it was the Maharaja who concluded the standstill agreement ; the Maharaja offered the same standstill agreement to two countries. What is more, what the Maharaja can give he can take away in those circumstances—not the conditions of accession. And Pakistan, having that standstill agreement, and the Maharaja having asked another country to come to his defence against Pakistan aided marauders in his country—the standstill agreement was dead. First,

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even if there was a standstill agreement, that would give no right to sovereignty ; accession is a superior document, it is a higher level of right which kills the lower one. Secondly, the standstill agreement has been violated by the actions of Mr. Jinnah's administration—the Governor General—and the supreme authority in Pakistan whereby these people were being sort of starved into submission by being denied salt, oil and food, and what is more by the 73,000 Pathan raiders being collected with the invitation to loot the territory.

For all those reasons the standstill agreement which was supposed to be a panacea to prevent bleeding, to prevent the breaking of communications, etc.—that has gone to pieces. Therefore, I submit what remains is aggerssion—the action of Pakistan as Sir Owen Dixon has said. You may say "why do you quote Sir Owen Dixon when he is for you and why don't you quote him when he is against you ?" I gave you the reasons.

The only time that we have not been able to agree with Sir Owen Dixon, and the disagreements are not as had as it has been pointed out, was when Sir Owen Dixon departed from his mandate from the Security Council and tried to create a new situation. We have suffered enough by exploratory discussion *pro tem*—not considering positions—but to be told afterwards that we committed ourselves to exploratory proposals. Then, Sir Owen Dixon tried to put into Kashmir an adminstration in place of the Jammu and Kashmir Government which, as you will see in the resolutions of the United Nations Commission, was the only authority. What is more, the Commission said nobody had the right to change the status juris or any other status in regard to this matter. It is only then that we disagreed with Sir Owen Dixon. What is more, Sir Owen Dixon was trying to find other methods of compartmental plebiscites—of partitions—of various other ways of settling this matter. But where Sir Owen Dixon's opinion is of value is that Sir Owen Dixon is a jurist. He is now the Chief Justice of Australia—and they do not make chief justices of people who do not understand either municipal or international law;

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and that is not a presumption—in this case he is well known. What did Sir Owen Dixon say ? He said that Pakistan—I quoted the paragraph to you before so I will summarize it—when Pakistan entered the Kashmir territory it committed an offence against international law—that is to say, there was a breach of our sovereignty—and that was aggression. And therefore we cannot, whatever happens, we cannot in obedience to the Charter, out of respect for you gentlemen who represent the Authority of the United Nations—not in your persons, not even in your countries—but by the mandate that rests on you—we shall not at any time surrender the right to defend the moral right, the legal, right, the political right and the military right of a country to defend its own sovereignty.

Kashmir is an intgeral part of India. It could cease to be so only by an act of volition by the Government of India. Therefore, when we came here that was the position. And in our desire to find settlements we were prepared to consider various propositions. But at no time was the sovereignty of the Jammu and Kashmir Government ever abandoned or permitted to be abandoned, or any phraseology used in any of the documents that permitted it. And if the Council, as it is likely to be is overwhelmed with a large volume of this material, it would be interesting if one could find any document of the Securiry Council, of any authority of the United Nations, which did not reaffirm this position. We have taken pains to see that is not departed from. That was the position even in the last meetings of Mr. Graham. We came here, and what did we agree to ? We agreed to what is common ground between Pakistan and ourselves. We agreed, on the one hand, to what is our position in this matter, namely, that we believe every proposition is subject to negotiation, however difficult ; every proposition is subject to conciliation methods, even if the rights of one party are beyond questions. Therefore, we were prepared to discuss these matters. I can understand the legitimate feelings of satisfaction in the minds of the Security Council members when they said that here was a question on which the two parties were agreeing on a method. But let us read the phraseology of it. The Security Council records that both parties have expressed

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a desire to settle this matter in this why ; but that does not mean that there has no invasion, that does not mean there is no sovereignty, that does not mean there was no accession. I might be the owner of a house, but it may be that for many reasons I may prefer to give it up if certain conditions happen.

So we came here and the proceedings started. Now at this stage we would like to make it quite clear that it is not the contention of the Government of India that the Security Council could be a sort of Rip Van Winkle and forget the nine years that have passed. It cannot forget them in terms of its own resolutions; nor can it forget them in terms of subsequent events. So we are not saying, "forget all this and go back as though nothing had happened". That is not our position. The issue before this Council is the question of aggression in order to put an end to the aggression, according to the principles of the Charter. When that is liquidated, one method or another method may be tried. The invasion and its consequences—its consequences to the peoples of Kashmir and, in our humble submission, more particularly to the peoples of Kashmir in these unfortunate areas that are occupied by a Government that has no free elections where economic conditions are such that the people are in a very bad way—are exemlified by the statement of the leaders of the "Azad" movement in their Memorandum to the Constituent Assemply [S/PV. 762/Add. 1, annex III, sect. 1] that they cannot appoint even a peon, meaning a messenger or a porter of some kind. They have no such powers at all. The aggression concerns them, it concerns us, it concerns us, it concerns what is called the sub-continent. I believe it concerns the whole area that lies in the lap of the Indian Ocean, and it may concern the world. That is why this Kashmir question is so important. That is why we are prepared to go on trying, and we have kept on trying.

Sir Firoz Khan Noon reminded me that I could not just rub out all that has happened since the last meeting of the Security Council in 1952. I have made no such attempt. Therefore, it comes to this question : the gravamen of the charge, particularly if you read the Press of the United Kingdom, is that my country, which is in the closest fraternal relations with the

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United Kingdom, which has a great regard for its traditions and its powers even when it was rulling us, is about to or has committed an act of international brigandage; that we are about to commit or have committed violations against our international obligations. And I say most solemnly, not only on behalf of my delegation in this meeting but on behalf of my Government and my people, that we have no intention and we shall at no time violate an international obligation. If we do, we deserve to stand convicted. But the Security Council has an equal responsibility to see that these are international obligations, to examine their content. Therefore, let me take the first step. The issue is said to be the plebiscite—that is what we are talking about—that is before the Security Council. In fact that is not the real issue, because we are now talking in a vaccum. As the Commission said, situations change but resolutions remain unchanged. If I had said that, members of the Security Council would tell me privately that I was being aggressive. I am temperamentally not aggressive, as everybody knows. It is the Commission that said : "Situations change; resolutions do not change."

Now let us take this question of the plebiscite. I submit that the origin and the family tree of this plebiscite arose from our desire not to take this territory of Kashmir, originally ruled by a rather wrong kind of maharaja with whom we joined issue, where there was a considerable popular movement, where our national leaders were threatened; and we wanted to settle that. Then Lord Mountbatten wrote to the Maharaja. This letter is not part of the instrument of accession, as I told you at a previous meeting [763rd meeting, paras. 105 and 106]. The instrument of accession is complete with the offer and the acceptance. This was a letter that went separately. Therefore, it is an expression of a wish.

That is one aspect of the plebiscite question, but the Foreign Minister of Pakistan, as he is entitled to do, has referred to various other statements made by my Prime Minister to his then Prime Minister in regard to various solutions of the problem. Here I want to submit certain propositions of international behaviour, which apply equally to municipal behaviour.

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If an offer is made and it is rejected, that offer is no longer alive. If an offer is made and it is accepted, it becomes an engagement. It would be impossible to function in any other way, since there would be so many commitments floating about in the air.

It is quite true that Lord Mountbatten did ask Mr. Jinnah, the Governor-General, "Why not arrange this by a plebiscite and do it through the United Nations, and this, that and the other?" His answer was not an acceptance but a counter-offer : "Let us two govern this country. Let us supress the raiders"; and this, that and the other. We rejected that. So that phase of it was over. There were so many other phrases of it. The Foreign Minister read out the text of a document, which was authentic as far as it went, but it looks different if you read the whole context. It was a telegram from Pandit Jawaharlal Nehru to Mr. Liaquat Ali Khan, the Prime Minister of Pakistan, in which he said : "This is an offer we make to the people of Kashmir, to Pakistan and to the world." We do not deny this. But it did not accept it at that time. What is more, not only did it not accept it by words; it did not accept it by conduct, because the other side of the offer was that there should be a withdrawal of the aggression, that there should be a stopping of force and violence and hatred and things of that kind.

So we come to the date of 22 December 1947. I would refer to the letter of 22 December 1947 from my Prime Minister to the then Prime Minister of Pakistan. I do not propose to read the whole of it but I beg the members of the Security Council to read the whole of it because it was written by my Prime Minister from the anguish of his heart when all the suffering was going on in our country, with the knowledge that only a few days previously this man had been his own Finance Minister, and in a country that only a few days previously had been part of our common homeland. All the paragraphs hang together, but I do not wish to shelter myself under that. However, on 22 December we terminated this position. It is common knowledge that even a treaty can be denounced; much more so

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an engagement; and even more so on offer. So on 22 December my Prime Minister said this :

> "Since protest have failed to bear fruit, the Government of India now formally ask the Government of Pakistan to deny to the raiders . . ."—then are set out, under numbers 1, 2 and 3, access, military supplies and other kind of assistance.—"The Government of India have always desired and still earnestly desire to live on terms of friendship with Pakistan."—That is the only subsisting engagement that, in spite of everything that happens, will subsist in our hearts.—"It is their sincere hope that the request that we have now formally made will be acceded to promptly . . ."

Therefore, this is in the nature not of an ultimatum but of a termination of the previous relationship. That is what happens between countries. They say, "If you do not do this, we will do something else."

> "Failling such a response, they will be compelled to take such action, consistent with the provisions of the United Nations Charter, as they may consider necessary to protect their interests and to discharge their obligations to the Government and the people of Kashmir."

I submit that this letter would entitle the Government of India, in accordance with International law and practice and the observance of the Charter of the United Nations, to take any step, including the invasion of Pakisian, for the defence of that territory. Therefore, on 22 December we concluded that chapter was ended, the chapter dealing with what Lord Mountbatten said and what Campbell-Johnson said and what someone else said and what Mr. Jinnah said : "I will call the whole thing off", or whatever it was. All that was over. We came to a new chapter, and that chapter is the complaint before the Security Council.

I have dealt with the complaint as best I can, and I have said that the only answer has been a denial. That denial has

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been subsequently disproved, and therefore the complaint exists. It arises from this, that any engagements by which the Government of India is bound are only the engagements to which it is a party since that period, apart from the general obligations under international law. I want to repeat that. Apart from the general obligations under the Charter, the only specific engagements are the engagements arising from the reference to the Security Council, and I ask you to bear with me on an examination of this.

A number of resolutions have been passed by the Security Council, and none of these are resolutions of a character which may be called that of international engagements except the two to which my distinguished colleague has referred. The remainder are by way of adjuration and, to the extent that they are under Chapter VI of the Charter, they are not binding upon the people concerned. They are by way of recommendation.

What is the obligatory nature of actions taken under Chapter VI of the Charter ? This goes back to San Francisco. In San Francisco this matter was discussed at great length, and the United States took a very prominent part. This Belgian delegation at that time wanted to place this matter beyond doubt and therefore moved amendments to these provisions. The Conference, however, agreed that an important stage had been reached with Article 37. This Article states that the Security Council may take up disputes where the parties have failed to reach a settlement by the other means indicated. It goes on to state :

> "If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate."

The Council may recommend terms of settlement, but it does not have the power to compel the parties to accept the terms. It has the power to enforce its decisions only after it is determined under the provisions of Chapter VII that a threat to the peace exists.

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I would not have brought this up but for the fact that my distinguished colleague, not only in this forum but before his countrymen and mine, has said that we were defying the decisions of the Security Council. The only decisions the Security Council can make are the decisions under Chapter VII. If you will refer to the "Report to the President of the United States" on the result of the San Francisco Conference from the Chairman of the United States delegation, the Secretary of State at that time—I think it was Mr. Stettinius—on 26 June 1945 (It is a United State document) you will find that on pages 85 and 86 the legal position is clearly set out as regards the nature of the recommendations and the position of the Security Council in terms of the Charter.

Therefore, recomendations are of that character. And if it is said that the Council has passed this resolution and that it has that moral force, the Government of India will go out of its way to pay every attention to it. But when, as in the case of the resolution of 21 April 1948 [S/726], it is not possible for us to accept it, the position is rather different.

We therefore come to the international engagement—with the observation that my Government stand by every international commitment it has made. There is no Member of the United Nations to which we yield in our desire to carry out the spirit and the letter of the Charter. But we are not to be placed in the position where the attempts that we make for exploration or to find ways and means, without arguing every question at every time are turned against us. Even on this occassion, some people have wondered why my Government has instructed me that the whole of the case should be put at the first meeting, as far as possible—and I crave the indulgence of everyone for repeating this, because, when we have not, we have suffered in the bargain.

The only international engagements that exist are two resolutions: the resolutions of the Commission dated 13 August 1948 [S/1100, para. 75] and 5 January 1949 [S/1196, para. 15]. My delegation has arranged for copies of these, which are official documents, to be in front of you for ready

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reference, since these are the key documents on which the honour of my country is challenged and the position of India in relation to the Charter has to be examined. What is more, I say with all the seriousness and the gravity of which I am capable that, when Member Governments gives consideration to this, these matters have to be taken into account. These are the engagements. If they were of a formal character, they might be treaties, but, at any rate, they are the engagements we have entered into—the resolutions of 13 August 1948 and 5 January 1949.

The resolution of 5 January 1949 is of a supplementary and subsidiary character. (At the 766th meeting the representative of Pakistan asked why I call it "subsidiary". I looked up the Oxford dictionary, and I found that "supplementary" and "subsidiary" mean much the same thing. "Subsidiary" means "serving to assist" or being "auxiliary". "Supplementary" means "added to supply deficiencies, especially a fuller treatment of a special subject".) The document of 5 January 1949 has no independent existence; it has to be fitted into the framework of the first document.

I have been asked by my Government to invite the Security Council to examine these documents, because it is on the basis of these that the Council, when the time comes, will have to see now this question stands, what the obligations are, what further steps can be taken or not taken, and what will be the consequences. I therefore crave the indulgence of the Council and ask representatives to refer to these documents, which we have placed before them for purposes of reference. These resolutions, particularly the resolution of 13 August 1948, are the result of laborious negotiation. Every words is a matter of give and take and has taken perhaps a whole conference. We accepted this resolution of 13 August 1948; Pakistan rejected it, in the first instance. We accepted the resolution of 5 January 1949 on 23 December 1948; Pakistan accepted it on 25 December 1948. Our acceptance was prior. With regard to the resolution of 13 August 1948, the Government of Pakistan made so many conditions in regard to its acceptance that the Commi-

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ssion said that those conditions really altered the character of the whole thing.

I invite the Council to examine the official document as it appears in paragraph 132 of document S/1430 (*Official Records of the Security Council, Fourth Year, Special Supplement No. 7*). This is in the Third Interim Report of the United Nations Commission for India and Pakistan. At the risk of taxing the patience of the Council, it is my duty, which my Government has instructed me to perform, to deal with every word of this in so far as pertinent.

The first sentence reads :

"*The United Nations Commission for India and Pakistan,*

"*Having given* careful consideration to the points of view expressed by the representatives of India and Pakistan regarding the situation in the State of Jammu and Kashmir...".

I invite attention to the words "regarding the situation". It does not speak of a "dispute" here. but of a "situation"—this is what we accepted—"regarding the situation" caused by the invasion by Pakistan. Invasion of what ? Not of no-man's-land, not of a divided territory— but of the State of Jammu and Kashmir—which is an assertion of the whole of its entity. These are the key words in the first paragraph. First of all, we are dealing with a "situation", as my predecessor submitted to this Council. We are making a complaint of a "situation" in the State of Jammu and Kashmir. Therefore, there are not two States, there are not two authorities, and, as you will see later on, this Government is sovereign.

The next paragraph reads ; "*Being of the opinion* that the prompt cessation of hostilities. . . .". Those words are a key to the state of mind of the Security Council and the parties at that time—"the prompt cessation of hostilities"—because we brought the complaint here in order to prevent the fire from spreading. And, from our point of view, it was telling the Security Council that we would be forced into a position which we did not want

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to take. The next point reads : "and the correction of conditions the continuance of which is likely to endanger international peace and security . . .". That is the remedy sought. Those conditions are the invasion by the other side. It then goes on : ". . . to assist the Governments of India Pakistan . . .". There is no reference here to any other authority—to "Azad" Kashmir or anybody else. It speaks of assisting the "Governments of India and Pakistan", who are the two combatant high commands. Here it is not a question of two States. It would be two people engaged in a conflict, as we will see later when the agreement is signed—the two high commands. ". . . to assist the Governments of India and Pakistan in effecting a final settlement of the situation". That is the second paragraph.

There is nothing in the next paragraph, because it simply says that the proposal will be submitted simultaneously to the Governments of India and Pakistan. Although it was submitted simultaneously, it was accepted by us and rejected by them. That is the preamble.

The pattern of the body of the resolution is that it is in three parts, and each part has sub-parts. The first part consists of five paragraphs : A, B, C, D and E. I invite the Council's attention to them.

Part I is headed "Cease-fire order", and paragraph A reads : "The Governments of India and Pakistan...". There is no recognition here of the "Azad" Government, insurgent forces or anything else. When the Commission went to Karachi, Sir Mohammed Zafrullah Khan, who was then Foreign Minister, informed the Commission that the Pakistan Army was there. We all knew it—but only then was it admitted. Paragraph A reads :

> "The Governments of India and Pakistan agree that their respective High Commands will issue separately and simultaneously a cease-fire order to apply to all forces under their control in the State of Jammu and Kashmir as of the earliest practicable date or dates to be mutually agreed upon . . ."

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There is nothing controversal in that.

Then we come to paragraph B, a very important paragraph on which the present situation so much turns and we submit with a great degree of sadness that the Security Council has not hitherto given it sufficient attention. Our Prime Minister has expressed this fully in many places and we must say it again. Paragraph B reads as follows :

> "The High Commands of the Indian and Pakistan forces agree to refrain from taking any measures that might augment the military potential of the forces under their control in the State of Jammu and Kashmir."—It is our submission today that not only has Pakistan not carried out part II of the agreement but it has also violated the cease-fire agreement, and we propose to prove this.—"(For the purpose of these proposals forces under their control shall be considered"—and the next phrase is very important—"to include all forces, organized and unorganized, fighting or participating in hostilities on their respective sides.)"

Now this is the kind of definition that you will find in consonant, for example, with the description in the Geneva Conventions. Here it is : There is an undertaking by the two High Commands that they will refrain from taking any measures that might augment the military potential; and we contend that ever since the conclusion of these two agreements Pakistan has consistently, repeatedly, continuously and without interruptions violated paragraph B of the cease-fire order. I thought this would be the best place for me to elaborate, but my advisers tell me that it is better for me to deal with the resolution first and to come back to this argument afterwards.

Paragraph C reads :

> "The Commanders-in-Chief of the forces of India and Pakistan shall promptly confer regarding any necessary local changes in present dispositions which may facilitate the cease-fire."

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Paragraph D reads :

"In its discretion and as the Commission may find practicable, the Commission will appoint military observers who under the authority of the Commission and with the cooperation of both Commands will supervise the observance of the cease-fire order."

Nothing turns on this paragraph, Military observers have been appointed and they constantly report ; and as I mentioned the other day, if there was any concentration of Indian troops, the military observers would have reported to the Secratary-General.

Now we come to a key paragraph in part I, that is, paragraph E : "The Government of India and the Government of Pakistan agree to appeal to their respective peoples . . ."—the first was a negative action of desisting from doing something, but here we have agreed to appeal to our respective people—"to assist in creating and maintaining an atmosphere favourable to the promotion of further negotiations." As this argument develops you will find a statement by the Government of India: that the one condition that is necessary for the settlement of this problem, or even for negotiation, is an improved atmosphere. It is impossible to negotiate effectively, to come to an agreement in the context of a campaign of war propaganda that goes on against us and a programme of religious hatred. We will at no time agree to a State being founded on a religious foundation. We want our people to be religious, to have freedom of religion and freedom of worship, but this is a matter between them and their conscience, or the Supreme Being, or whatever you call it. We are not prepared to consider secular matters on any other basis. Paragraph E states :

"The Government of India and the Government of Pakistan agree to appeal to their respective peoples to assist in creating and maintaing an atmosphere favourable to the promotion of further negotiations."

It is our submission that from that day—and I will read some of the propaganda—since the Security Council passed the

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resolution, it is for the Security Council to consider what relation the stepping-up of the propaganda has to the resolution passed. It is not for me to say, because I am invited here under Article 32 of the Charter to state my case. We say that paragraph E stands violated. So far as the cease-fire order is concerned, paragraphs B and E of part I stand violated. I will tell the Security Council what the effect of that violation is on the so-called international engagement.

Nowe w come to Part II. This is a truce agreement and the first paragraph reads as follows :

> "Simultaneously with the acceptance of the proposal for the immediate cessation of hostilities as outlined in part I, both Governments accept the following principles as a basis for the formulation of a truce agreement, the details of which shall be worked out in discussion between their representatives and the Commission."

Let us look at section A of the truce agreement. The first part of section A is a key paragraph to which so little attention has been paid in the years that have passed :

> "1. As the presence of troops of Pakistan in the territory of the State of Jammu and Kashmir constitutes a material change in the situation since it was represented by the Government of Pakistan before the Security Council, the Government of Pakistan agrees to withdraw its troops from the State."

What is the significance of this ? First of all, as I said, there is something you cannot deny. But Pakistan denies that there are troops there and, even taking that date in May—which we do not accept in fact—it was six months aferwards when the Security Council found out—when they went to Karachi and not before—that the troops of Pakistan had entered.

Therefore, two things emerge : first, that a material change has taken place in the situation since we came here,

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because the Security Council was informed to the contrary. I submit, without desiring to use any strong words, that this was the first instance, the basic instance, in which the Security Council was kept in the dark and the facts were concealed from it. Although they were first concealed from us, we came to know about them and that is the reason for all the emotional letters from the heart written by my Prime Minister to the other Prime Minister. Now a material change is the introduction of the Pakistan Army, the introduction of the Army to a country which it had previously said it had not entered.

Now the Commission says this constitutes material change. This is a key factor in the whole situation and unless it is taken into account this problem cannot be understood. What has the Pakistan Government to do ? ". . . The Government of Pakistan agrees to withdraw its troops from the State." I would like you to listen to those words. In paragraph 1 of section A of part II what is agreed to is an uncondtional withdrawal by Pakistan of its Army from the State of Jammu and Kashmir. So all this palaver afterwards about synchronizations and about a balance of forces and so on is not what is intended by this clause. The duty of withdrawal was unconditional and therefore no part of this agreement can even be considered until Pakistan has ended the aggression. And if I may submit—and we as a Member State are entitled to submit under the terms of the Charter—the duty of the Security Council in terms of the Charter is to put an end to this aggression. It is laid down that "Pakistan agrees to withdraw its troops from the State."

Now let us look at paragraph 2 of Section A, which reads :

> "The Government of Pakistan"—that is the first step, there will be more—"will use its best endeavour to secure the withdrawal from the State of Jammu and Kashmir of tribesmen and Pakistan nationals not normally resident therein who have entered the State for the purpose of fighting."

Paragraph 2 has not been carried out and it continues not to be carried out and that action is one of the subsist-

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ing problems of the situation, as you will see when we go into detail.

Paragraph 3 reads :

"Pending a final solution, the territory evacuated"—this is again a very important part—"by the Pakistan troops"—that is to say, the territory that they are now occupying, as I told you when I spoke about the Constituent Assembly and as I shall point out later on, that territory was supposed to be evacuated by them altogether. They had to go away : they were invaders, they have no right there. The only people who could stay were the local authorities —"will be administered by the local authorities under the surveillance of the Commission."

Paragraph 3 therefore makes it clear beyond all doubt that the State of Pakistan had no business whatsoever in the territory of Jammu and Kasamir and that the duty which they failed to discharge was to remove themselves fully and completely. It is no answer for the Foreign Minister of Pakistan to turn round and ask me. "What is it that he wants the Security Council to do ? To serve Kashmir on a platter to him and India ?" [766th meeting, para. 18].

We come now to section B, paragraph 1, which reads as follows : "When"—and the word "when" in English means just what it says—"the Commission shall have notified"—that is to say, the following action must be after the notification—"the Government of India"—not the Government of Pakistan, because the Government of India is the sovereign authority in this matter—"that the tribesmen and Pakistan nationals referred to in part II, A, 2 hereof have withdrawn"—(I invite the attention of the Council to the word "when"—nothing can happen until this event takes place. The Commission has to notify about what ? That the tribesmen have withdrawn from the present occupied territory, that they have completely evacuated.)

"When the Commission shall have notified the Government of India that the tribesmen and Pakistan nationals referred to in part II, A, 2 hereof have withdrawn, there-

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by terminating the situation"—the situation which was being complained of—"which was represented by the Government of India to the Security Council as having occasioned the presence of Indian forces in the State of Jammu and Kashmir"—that is to say, the Commission has to report that they have withdrawn, thereby terminating the situation which made the presence of our troops in Kashmir necessary. Until that situation is terminated nothing can happen—"and further, that the Pakistan forces are being withdrawn from the State of Jammu and Kashmir, the Government of India agrees to begin to withdraw the bulk of its forces from that State in stages to be agreed upon with the Commission."

Some of the things which the Council has heard are in violation of this clause. When the Commission notifies us that the tribesmen and Pakistan nationals have been withdrawn, then we are to begin to withdraw the bulk of our forces, and the stages of that have to be agreed upon with the Commission. It has nothing to do with Pakistan : it is with the Commission. We informed the Commission that we would tell the Commission in confidence about our troop movements, but that we were not prepared to tell Pakistan about them. Pakistan insisted that it should be told, and that is one of the reasons why the negotiations broke down.

Section B, paragraph 2 reads as follows :

"Pending the acceptance of the conditions for a final settlement of the situation"—and I again invite the attention of the Council to word "situation"—"in the State of Jammu and Kashmir, the Indian Government will maintain within the lines existing at the moment of the cease-fire those forces of its Army which in agreement with the Commission are considered necesssary to assist local authorities in the observance of law and order. The Commission will have observers stationed where it deems necessary."

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Here we have one of the most difficult clauses in the sense that its meaning has not been fully appreciated by the Security Council in later considerations. Now what does this paragraph state ? "Pending the acceptance of the conditions..." —while the situation remains, the forces of the Indian Army, with the agreement of the Commission, will be maintained as necessary to assist the local authories. Now the key words are "local authorities". "Local authorities" is a phrase which is applied only to administration in the Pakistan-occupied area ; in the other parts it is the Government of Jammu and Kashmir. According to this, therefore, the Indian Army is to assist, in the maintenance of law and order, the local authorities on what is the so-called "Azad" side. Therefore, at this stage there was no question of anything but stopping the aggression. This will become clear if the Security Council will read the document dated 20 August 1948, which is a letter from the Prime Minister to the Commission about the Commission's assurances [S/1100, para 78]. I should like to ask whether the Security Council would say that assurances given on behalf of the Commission to the head of a Government, assurances which are published, do not have the same value as all the engagements.

Therefore, paragraph 2 gives the Government of India the right and the duty to assist in the maintenance of law and order. When the Chairman was asked what was meant by law and order and what about the external defence of the State of Jammu and Kashmir, he stated that the two could not be separated. The position, therefore, was the one which Mr. Gopalaswami Ayyangar put to this Council : the Pakistan forces' withdrawal and the occupation of external frontiers of Kashmir by the Indian Army. That was the position at that time.

When we raise these questions people think we are splitting hairs. Might I digress for a moment to state that if this case was being argued before a legal tribunal it would probably take three or four weeks' time. However, the Members of the Conncil are so busy that we have to go through this quickly.

The term "local authorities" is used throughout the whole of these documents only as applied to the authorities that are

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not *de jure*. Paragraph 2 places upon the Government of India both the duty and the right to look after law and order in the occupied area. In the light of that clause, I ask whether the whole stand of the Pakistan Government is justified. Not at all.

Section B, paragraph 3 reads as follows :

"The Government of India will undertake to ensure that the Government of State of Jammu and Kashmir will take the the measures within its power to make it publicly known that peace, law and order will be safe-guarded and that all human and political rights will be guaranteed."

This we have done, and we did it not only at that time—it is in that spiritual that the Constitution came into being. Before that time there was no Constitution and there was no popular Government. What is more, very soon afterwards the dynasty was displaced and the son of the older Maharaja, who was an autocratic ruler, became elected Head of State. We proceeded in pursuance of part II, section B of the resolution.

We come now to section C, which has filled many minds but which is not necessarily the key part of the picture. Section C, paragraph I, reads as follows :

"Upon signature, the full text of the truce agreement or a *communique* containing the principles thereof as agreed upon...will be made public".

I am sorry to say that this opportunity has not arisen because no truce agreement has been signed. Part I has been violated in two main sections. The cease-fire agreement has been violated and part II has not been implemented. Every necessary condition has been breached.

This takes us now to part III, which refers to the plebiscite, and which reads as follows :

"The Government of India and the Government of Pakistan reaffirm their wish"—it does not say "their

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pledge"—"that the future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and that end..."

First, as I have said, it is affirmation of our common wish. Secondly, it states that it should be determined in accordance with the will of the people. However, this wish concerning the future status of the State of Jammu and Kashmir in part III is not concerned with the present status. The present status is a status under accession. This concerns only the future status. A distinction must be made between an accession as *pro tem* and an accession to be terminated on the transpiration of another event. Those are two different matters, both in law and in fact and in all the political implications of this question.

Then follows that very nice English expression "upon acceptance"; "upon acceptance" means after acceptance ; it not only denotes a sequence, but a sequence of a particular character :

> "upon acceptance of the truce agreement"—then what is to be done ? After it is acceptance—"both Governments agree to enter into consultations with the Commission" —It does not say, "both Governments go and take a plebiscite", but "both Governments agree to enter into consultations with the Commission", and for what purpose ?—"to determine fair and equitable conditions whereby such free expression will be assured."

When I develop this point the Council will, I hope, be convinced not only that there have never been these fair conditions but that under conditions of psychological warfare and the threats uttered even in this Council, and the massing of personnel on the other side and all the conditions which I shall refer to, these fair and equitable conditions cannot be assured. There can be no question of an election—certainly not under our Constitution. And when I say "our Constitution" I want to make this further observation, because you gentlemen here,

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respresenting other States, can have only a friendly interest in our Constitution. It is only we who owe allegiance to it. My friends from the United Kingdom and Australia may have more than a friendly interest in it, because it has family resemblances, and we have a debt of gratitude and a sense of heritage in that respect. But these particular provisions reflect the canons of international behaviour. They are not just municipal law. They are municipal law which corresponds to international conduct.

That is part III, and I will deal with it in detail later. It is part III, therefore, that refers to ascertaining the will of the people. The two Governments are to confer about fair and equitable conditions after part II and part I have been implemented—after the signature of the truce agreements.

Now that is the present position ? Part II is violated. This is an old violation ; it stands continually violated. The present position is one of violation. Therefore the Pakistan Government is, in this respect, in a state of sin. It was original sin, but it is continuous so far as part I is concerned, and part II has not taken place. And the Council heard what Sir Owen Dixon said—that, apart from all other considerations under the resolutions, none of these things could take place without the agreement of the Government of India.

Before I go on the resolution of 5 January 1949 I want to repeat what I said a while ago. It is not as though the Government of India is now trying to read meaning into these words. It is not what the lawyer called "the construction of a document"—some old lady writes a will ; there is a contest about it; clever lawyers try to read as much as they can into it. That is not the position. This document has taken a great deal of brain work. It has meant so much coming and going ; so much saying "yes" and "no"; so much breakdown, and so on and so forth. Each word has been put in there deliberately. Not only has the document to be read in its obvious and legal meaning—that is to say, there is a construction of all documents according to law—but it has to be read against the background of all the circumstances. The Security Council, in spite of the fact that

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its members are heavily engaged, cannot ignore the background conditions which are recorded in so many volumes. These are far too serious matters for it to be said. "There was talk of a plebiscite ; will, if we have not a plebiscite, then this that and the other". Therefore, the whole of this thing had to be read.

That brings me to the resolution of 5 January 1949. Pakistan refused to accepted the resolution of 13 August 1948. At that time the position which was stated by Sir Mohammed Zafrullah Khan was that this was for the purpose of a cease-fire ; and that there should be no cease-fire until there were political settlements. He was holding it up in order to obtain other conditions. Then I believe the Pakistan Army suffered severe reverses. I am asked to quote to you what the Prime Minister said in Allahabad ;

> "We stopped a victorious army. We could have settled conclusions, We were stronger at that time, and, God forbid, if our country were invaded we should still render a good account of ourselves. In obedience to the Charter we restrained the action of our military forces. Instead of obtaining what we could have obtained by the use of force we continued to negotiate, having accepted it."

The Commission returned to Paris, had further talks with the Pakistan Government—and the military situation had probably some effect on the matter, as a matter of opinion —and on 11 December 11 December it elaborated further proposals, partly to meet the Pakistan position that there must be some talk about what likely to happen after the truce, what the nature of things, and so on and so forth. Therefore, the Commission spent its time in working out a plan which could be useful if we ever came to part III.

The resolution of 5 January 1949, which covers so many pages, has from India's point of view, an adverse psychological effect upon those who read it. There are paragraphs about a plebiscite, but none of it is worth the paper it is written on unless part I and part II of the 13 August 1948 resolution are

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agreed upon and, in the case of part III, we confer and agree on fair terms. Therefore the whole of the resolution of 5 January, which I shall read to the Council in a moment, cannot be read, either as to its individual paragraphs or as to its entirety, except in this context. And it is common ground that these two resolutions stand together, because it says "supplementary". It is supplementary and subsidiary because it adds to the other. It enables the other to function if the occasion came.

What does it say ? Paragraph I says :

"The question of the accession of the State of Jammu and Kashmir to India or Pakistan will be decided through the democratic method of a free and impartial plebiscite."

Paragraph 2 says :

"A plebiscite will be held when it shall be found by the Commission"—and I ask all of you who are scholars of English to tell me what this means. "When it shall be found by the Commission", in plain English, is a condition precedent. If it is not found by the Commission, then no plebiscite.—"that the cease-fire and truce arrangements set forth in parts I and II of the Commission's resolution of 13 August 1948 have been carried out and arrangements for the plebiscite have completed."

We can leave aside the second part because arrangements for the plebiscite did not follow. So it is only if parts I and II are completed, and I invite the Council's attention to the number of times mention is made, in paragraph after paragraph, of this question of the condition precedent, of the sequence, of something happening after something else. And then again it is an investigation ; it is the applying of minds to a plan in order to find fair means of doing this. That is paragraph 2. As I said, neither part I nor part II has been completed.

Then we come to paragraph 3 (a), which says :

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"The Secretary-General of the United Nations will, in agreement with the Commission, nominate a Plebiscite Administrator who shall be a personality of high international standing and commanding general confidence. He will be formally appointed"—and this again is a very important sentence—"to office by the Government of Jammu and Kashmir."

Why ? Because the Government of Jammu and Kashmir is a sovereign Government. It alone has authority over the territory. And this is what Sir Owen Dixon—as he was entitled to be in his mediatory function, although he was entitled to do in his mediatory function, although he was *ultra vires* of this agreement—tried to shift : "He will be formally appointed to office by the Government of Jammu and Kashmir." It was perhaps this sentence in the resolution—namely, that the plebiscite Administrator "will be formally appointed to office by the Government of Jammu and Kashmir"—that Mr. Menzies had in mind; he did not see any reason at all why the Government should be displaced.

Paragraph 3 (b) of the resolution states :

"The Plebiscite Administrator shall derive from the State of Jammu and Kashmir the powers he considers necessary for organizing and conducting the plebiscite and for ensuring the freedom and impartiality of the plebiscite."

Nothing can be nearer to the classical definition of sovereignty than this phrase "shall derive from the State of Jammu and Kashmir the powers..." Under the general, classical definition, the sovereign is the person from whom all power flow. I do not say that there can be no modifications of that definition, but I do say that it is the classical definition.

Paragraph 3 (c) reads :

"The Plebiscite Administrator shall have authority to appoint such staff of assistants and observers as he may require".

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This is an administrative provision.

Paragraph 4 (a) states :

"After implementation of parts I and II of the Commission's resolution of 13 August 1948"—and here, again, we find the words" after implementation"; it is not I who am repeating these phrases ; it is the resolution itself which, time and again, uses such words as "when it shall be found", and so forth—"and when the Commission is satisfied that peaceful conditions have been restored in the State, the Commission and the Plebiscite Administrator will determine, in consultation"—with whom ?—"with the Government of India, the final disposal of Indian and State armed forces, such disposal to be with due regard to the security of the State and the freedom of the plebiscite."

In this connection, I should like to make one observation on the use of this word "disposal". As members of the Council know, the word "disposal" has been used with regard to the Government of India forces in the sense of disposition, not in the sense of throwing away.

Paragraph 4 (a) of the resolution, therefore also contains the kind of phrase to which I have been referring—namely, "when...peaceful conditions have been restored in the State." Now, these peaceful conditions have not been restored, because part of the country is under occupation. There is neither law nor order nor assembly nor constitution in that part of the country. Furthermore, the phrase in paragraph 4 (a) of the resolution of the effect that the Plebiscite Administrator will the Government of India" the final disposal of Indian and State armed forces, again establishes the fact that Pakistan has no part whatsoever with regard to these matters. Pakistan will be the beneficiary if the plebiscite goes a certain way. Under the arrangements to be made by the Plebiscite Administrator, Pakistan will not be concerned in such matters as watching, witnessing, supervising, and so forth—but we have not come to that stage.

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The resolution then goes on to set down some administrative provisions, which I shall not deal with in detail.

The next important paragraph in the resolution is paragraph 7; in fact, from our point of view it has very great importance. I am sure that everyone who is concerned with freedom of elections will wish to pay attention to this paragraph. It reads :

> "All authorities within the State of Jammu and Kashmir will undertake to ensure, in collaboration with the Plebiscite Administrator that :
>
> "(*a*) There is no threat, coercion or intimidation, bribery or other undue influence on the voters in the plebiscite;
>
> "(*b*) No restrictions are placed on legitimate political activity throughout the State. All subjects of the State, regardless of creed, caste or party, shall be sate and free in expressing their views and in voting on the question of the accession of the State to India or Pakistan. There shall be freedom...of travel in the State, including freedom of lawful entry and exit. . . ."

The importance of paragraph 7 (b) is that it contains the assurance that there shall be no religious propaganda : that is to say, there shall be no incidents similar to the one in the North west Frontier Province, where a mullah sat down, showed the Koran, and said, "Every vote that you cast against Pakistan is a vote against the Koran." Of course, in a sense that was true, because Pakistan is an Islamic State, and its Constitution is based upon the Koran. But that does not mean that the paragraph of the resolution which I have just quoted does not preclude religious propaganda in Kashmir.

Perhaps this would be a good time to deal with this matter of religion influencing elections. I invite there presentatives' attention to the Indian publication, *Manual of Election Law*, which they may find in the library of the United Nations. This is not a manual which we have devised for the purpose of

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dealing with Kashmir. Although it is a municipal document, it conforms to the general practices and standards of elections throughout the world. In this manual, we read that the following actions are prohibited in connexion with any elections in India :

> " . . . undue influence—that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of ady electoral right..."

It is also stated that there shall be no inducement of, or attempt to induce, an elector to believe that he or any person in whom he is interested will become or will be rendered an object of Divine displeassure or spiritual censure. It is also stated that there shall be no :

> "systematic appeal to vote or refrain from voting on the grounds of caste, race, community or religion" or "appeals to religious and national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of a candidate's election."

I freely admit that the law of India is not binding on the rest of the world. But I do say that what I have just quoted represents the canons of justice. Furthermore, this is not only what we have understood in our private, subjective minds, but is also part of the assurances given in the Commission's resolution.

I may be asked : How do you know that this is going to happen ? But I shall come to that when I deal with the circumstances existing at the present time. I would only say now that, when religious passions are inflamed, this leads to unrest and to an inability to exercise the franchise freely—and, in such circumstances, there cannot be a plebiscite.

I should now like to quote from an aidu-memoire which was accepted by the Commission. This aide-memosre gives an account of a meeting between Mr. Lozano, the Chairman of the

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Commission, and the Prime Minister of India. In it, we read the following comment by the Prime Minister on paragraph 7 (b) of the Commission's resolution of 5 January 1949 :

> "India is a secular State : the United Nations is also a secular organization. Pakistan aims at being a theocratic State. An appeal to religious fanaticism could not be regarded as legitimate political activity. Mr. Lozano agreed that any political activity which might tend to disturb law and order could not be regarded as legitimate. The same test would apply to freedom of press and speech." [S/1196, annex 4, aide-memoire 1. para. 4.]

That is not a private note recorded by the Prime Minister; it is an agreed summary of the conversations.

I will read out what is contained in annex V of document S/PV. 762/Add. 1. I hope the members of the Security Council will read this document at their leisure, although it is a long document, because it contains all the assurances given, and these are legal matters, they are matters which have the force of the solemn authority of the United Nations behind them. Annex V states :

> "This note sets out the following assurances given by the United Nations Commission for India and Pakistan to India before India's acceptance of the resolutions of 13 August 1948 [S/1100, para. 75] and 5 January 1949 [S/1196, para. 15] :
>
> "(1) Responsibility for the security of the State rests with India."—That is a sovereign right. The defence of our external frontiers is India's responsibility and therefore, there is no question of the relations between the Constituent State and the Union or any impairment of accession, so far as the present is concerned, whatever may happen in the future.
>
> "(2) The sovereignty of Jammu and Kashmir Government over the entire territory of the State shall not be brought

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into question."—Please mark these words. It is very carefully stated that the sovereignty of the Jammu and Kashmir Government—so there can be no argument afterwards that it is another sovereign State—"over the entire territory of the State shall not be brought into question."

"(3) Plebiscite proposals shall not be binding upon India if Pakistan does not implement parts I and II of the resolution of 13 August 1948.

"(4) There shall be no recognition of the so-called 'Azad' Kashmir Government.

"(5) The territory occupied by Pakistan shall not be consolidated."—Now it is a part of Pakistan, according to the Constitution of Pakistan.

"(6) Reversion of the administration of the evacuated areas in the north to the Government of Jammu and Kashmir and its defence to the Government of India, and maintenance of garrisons for preventing the incursion of tribesmen and to guard the main trade routes."—I ask any member of the Security Council : What does this mean ? That India is to maintain garrisons to guard the trade routes which lie on the external frontiers of Kashmir. The cease-fire line, as the Commission has said, is not a political boundary. The whole of the State remains.

"(7) 'Azad' Kashmir forces shall be disbanded and disarmed."—The pharse actually was "large-scale disbandment and disarmament"—the Commission said that if you disband them, then you must disarm them.

"(8) Exclusion of Pakistan from all affairs of Jammu and Kashmir."

The note which constitutes section A of annex V begins as follows :

"At the meeting of members of the Commission with the Prime Minister of India in New Delhi on 17 August

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1948."—three or four days after signature—"the Prime Minister, with reference to part II, section B, paragraph 2 of the 13 August 1948 resolution, stated :

'. . . that it would be necessary for India to retrain troops in Kashmir for defensive purposes as well as for the maintenance of law and order. Recalling that the same issue had been raised in the Security Council, he said that the Government of India must have sufficient troops to protect the territory against external attack. Mr. Korbel [the Chairman of the Commission] commented that in his understanding the phrase "law and order" could be interpreted to include maintenance of adequate defence inasmuch as that was essential to law and order.' "

Then follows the letter of 20 August 1948 from the Prime Minister of India, which the Commission said was in consonance with and a fair interpretation of its views.

It may be asked whether these assurances were made by way of a secret instrument, whether the Commission was just trying to state something which was capable of two interpretations, with a view to getting some settlement and hoping that things would work out. If that were so, the position would be rather awkward for the Commission, and its work would not have recorded the progress it did. But, in fact, these assurances were published and they were known to Pakistan before it accepted the resolution of 5 January 1949. I submit that whether one takes a political view or a common sense view—I am not saying that the two are in contradistiction—or whether one takes a legal view or an equitable view, when a party signs an instrument with the knowlenge of certain facts, then the commitments it undertakes are conditioned by and must have reference to those facts. Therefore, so far as India is concerned, these two resolutions and the obligations that go with them are our international obligations.

I have not been able, in the time there was, to work out each of these in detail, but I will go over them again rapidly. First of all, as I said, the cease-fire agreement was violated by

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the accumulation of arms and the training, at that time, of thirty-five battalions, now forty-five battalions, of the "Azad" Kashmir force, which is not a toy army, but which is as good as the Pakistan Army. Its personnel came out of the former British-Indian Army which acquitted itself with great valour in North Africa, in Itlay and in various other parts during the war. This force consists in the main of ex-servicemen and their descendants. In addition, there are large numbers of irregulars trained in guerrilla warefare, with about 600 or so in training at one time, and after training they are thrown back into the community. I refer to the air force and the military gun emplacements, and this is the state of affairs so far as part I, that is, the cease-fire, is concerned. It is for the Security Council to consider whether any step that we have taken was in breach of the first condition, which is the maintenance of the cease-fire. The Government of India has not violated this cease-fire agreement. We have not introduced into Kashmir any more troops or any more equipment than we had at the time of the signing of the agreement. In fact, we have withdrawn large numbers and we have many less people there, since, as the whole world knows, the size of the Indian Army has been reduced and it also has other responsibilities, particularly in the way of assisting in agriculture and economic development. Therefore, we ask the Security Council to look at this problem. Have we been in default ? That is not sufficient, because we are not on the defence, the default is on the other side, and, what is more, it is a default that goes to the roof of the agreement. Ju stas in every contract, a breach of an ordinary superficial condition does not very much matter, it is usually known as a breach of warranty. But a breach of a condition is something that changes the character of the contract, and if it goes to the root of the agreement, then the whole of the agreement is violated.

The only thing that today remains in which we have made our contribution is that the cease-fire line is maintained, the authority of observers is respceted, and I have given the solemn undertaking of the Government of India that, irrespective of our legal rights, irrespective of our desire to put an end to the aggression and to see an end of this business, the Govern-

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ment of India will not move one soldier, one gun, or fire a shot which will violate the cease-fire agreement. But, at the same time, it is our bounden duty to protect our territory, and the Security Council, in our submission, has a solemn obligation to take into account the phrases that were uttered by the Foreign Minister of Pakistan in regard to what can happen. We do not live in terror or in fear, but at the same time we, as a Government with our responsibility to the United Nations, have an obligation to remain under conditions of prudence.

Nine years have passed since then. Mr. Graham's reports are before the Council. On account of there being no time, we have not been able to go into them here in the Council, but they set out the two different points of view in their relation to the findings of the United Nations Commission for India and Pakistan. The whole of Mr. Graham's activities have been concerned with this one problem of demilitarization. Thoss who read the newspaper reports at that time were likely to be misled into the facile impression that, out of twelve points, ten or so were accepted; the others were not. One can mention a number of points, but the key point is point 7, and that was not accepted. It could not be accepted because it violated the sovereignty of the Jammu and Kashmir Government, As Prime Minister Nehru said yesterday : "We agreed to concur in a plebiscite, but the Pakistan Army promised to go." It is still there—and I am not saying this : the Foreign Minister of Pakistan told us on the first day : "We are prepared to withdraw." That means that the Pakistan Army is there; and this is nine years after. And I say that this withdrawal should be a unilateral action under this agreemeni.

So far as we are concerned, it is our duty—even though we are not remiss—to answer briefly to the allegations of breaches and defaults. The first breach alleged against us is the Constitueni Assembly. About this I have spoken so much, and I believe that when the doeuments of this Constituent Assembly are read, when its functions are understood, members of the Security Council—the majority, if not all of whom belong to countries and systems which want to see the functioning of bodies of this kind—will appreciate the fact that this has been

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concerned with the economic and the constitutional developments of that part of the area. It does not—but even if it did—decide something against accession, that would not be binding on the Government of India. It would be *ultra vires* of the Government of India Act. I fully concede that the Government of India could cede any territory as indeed any other Government could.

Then the Foreign Minister of Pakistan stated and implied so many times—and newspapers do the same—and when one has no information it is easy to come to very quick conclusions —that the Government of India delayed these matters. I invite representatives to read the proceedings of the discussions with Mr. Graham and others who have tried to establish a programme of demilitarization. How many concessions have we made ? How many agreements of a provisional character have we made in private conversations ? It goes further than all that, but I want to say here and now that they are no longer operative because they have not been accepted. They were provisional proposals put forward for this purpose.

That takes us to the present position. And I want to submit to the Council that it is not a question of the mathematics of 21,000 and 6,000. So long as there are the violations which I have complained of, so long as there is a campaign of hatred, wherever there is a slogan, it is my duty to point out that it ends—as in the case of the Roman emperors, who said : Carthage must be destroyed"—with "India must be conquered". Representatives on the Council cannot expect us to submit to this without exerciting our rights of survival. I am going to refer to this in a moment. The present position is that nine years have passed.

The Foreign Minister of Pakistan twitted me the *rebus sic stantibus* doctrine [766th meeting, para. 44]. I must say I enjoyed it. I have not the slightest objection to arguing the doctrine of *conventio omnis inelligitur rebus sic stantibus*, but I do not know how the Security Council can take upon itself the powers of tribunal. That is why I did not want to quote legal doctrine but, unless I am mistken—and I have done some

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research on this—the Foreign Minister of Pakistan was in error in informing this Council that it had turned down this doctrine. The Security Council cannot turn down this doctrine; it is a doctrine of international law that goes back to the days of the glossators. It can no more turn down the doctrine of *rebus sic stantibus* than it can turn down the fundamental basis of law.

And here we have the best authority, and perhaps the best people to look into this—and I hope other nationals will not mind are the British and the Americans because they have had a longer period of experience in the conclusion treaties, and getting out of them and having to modify them, and so on. A large volume of law has been developed. I am free to concede to Sir Pierson Dixon that, according to his system, you can still put a man in prison or lock him up on a Sunday, or something of the kind. That is because the conditions have not changed in that regard. But so far as international law is concerned, the distinguished English judge, Sir Arnold McNair whose independence has been placed beyond doubt by his giving judgement against his own country in the Anglo-Iranian Oil Co. Case in the International Court of Justice, said :

> ". . . it is reasonable that circumstances should arise in connexion with treaties (as they do in the sphere of private law contracts) in which it is necessary to imply a term or condition. That is to say when it is clear that, if the parties when negotiating had adverted to some contingency, . . . they wold have agreed to provide for it in a particular way, it is reasonable to impute to them an intention to contact on the basis of such a provision and to imply it as a term or condition in the treaty."

I shall come back to more conclusive statements from Sir Arnold McNair. I will now quote another authosity, Mr. Hall, who has written as follows :

> "Neither party to a contract can make its binding effect dependent at his own will upon conditions other than those contemplated at the moment when the contract was

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entered into, and, on the other hand, a contract ceases to be binding so soon as anything which formed an implied condition of its obligatory force at the time of its conclusion is essentially altered."

The United Kingdom regards the cessation of or a vital change in, the specific *raisond' ētre* of treaty as a ground for recognizing *ipso facto* the termination of a treaty. The principle applies to a changes which destroys the very object of a treaty stipulation : *cessante rationecessat lex.*

An an illustration of the applicability of this doctrine, referece may be made to a proclamation issued by President Roosevelt on 9 August 1941, which announced that certain treaties had become suspended and inoperative. He said :

"Whereas the conditions envisaged by the convention have been, for the time being, almost wholly destroyed, and the partial and imperfect enforcement of the Convention can operate only to prejudice the victims of aggression,"—that is what we are—"whom it is the avowed purpose of the United States of America to aid;" and that phrase "to aid" is a statement in which my country believes—"and Whereas it is an implicit condition to the binding effect of the convention that those conditions envisaged by it should continue without such material change as has in fact occurred..."

The circumstances were part of the consideration of the contract, assuming that there was one. It was because of those circumstances that the promise was made and that the disappearance of those circumtances, which were the foundation of the promise, rendered the promise ineffective.

These are modern authorities, President Roosevelt was a modern person in this connexion, and so is Sir Arnold McNair. But Oppenheim is the classic authority. He wrote the following :

"Vital changes of circumstances may be of such a kind

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as to justify a party in demanding to be released from the obligations of a treaty which cannot be abrogated by unilateral notice. Many writers defend the principle *conventio omnis intelligitur rebus sic stantibus*, and assert that all treaties are concluded under the tacit condition *rebus sic stantibns*, when kept within proper limits, embodies a general principle of law as expressed in the doctrines of frustration, or supervening impossibiliy of performance, or the like. It is in this sense—and in this sense only—that every treaty implies a condition that, if by an unforeseen change of circumstances an obligation provided for in the treaty should imperil the existence or vital development of one of the parties". I repeat the words "should imperil the existence of vital development of one the parties"—"it should have a right to demand to be released from the obligation concerned. Thus conceived, the doctrine *rebus sic stantibus*, when treated as a legal doctrine, embodies the same principle which the law of various countries admitted as a ground for dissolution or discharge or unenforceability of a contract owing to a vital change of circusmstances.

I am not relying on this doctrine, because I am not going to use this doctrine. My Government does not accept the view that the Security Council is called upon to take over the functions of the International Court of Justice, but the substance of its important politically. There was some suggestion that I have avoided even mentioning this because there is something wrong about it. Now *rebus sic stantibus* is a very respectable and ancient doctrine. But of course it is the law ; it is one of those outstanding instances where the law is conditioned by fact. What the International Court of Justice has said is that the doctrine still holds, but it could not be applied to the case before it. The Permanent Court of International Justice, particularly in the case of the free zones of Upper Savoy and the district of Gex, said this years ago. I cannot find any evidence in the proceedings of the Security Council—and I shall be prepared to withdraw this

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statement if I were shown it—where the Council has turned down the doctrine as a doctrine. I can see no evidence of it. If it did, then with great respect, it would be acting beyond its own powers, because it is not a law-making body. You would have to go to the International Law Commission. That is so far as this is concerned.

May I now try to deal with people who are not lawers. One is a very dear friend of my country, and that is the former Prime Minister of the United Kingdom, Sir Anthony Eden. I hope I am not starting any difficulties in regard to the sides taken in other controversies. The four Foreign Ministers, Mr. Bidault, Mr. John Foster Dulles, Mr. Molotov, and Mr. Eden, were at the Conference held in Berlin in January and February of 1954, and the question of the treatment of Germany arose. It is neither my purpose nor my business to go into the merits of that question. I have only to deal with what is the effect of of an agreement in certain circumstances, whether the whole of it ever suggests, and in all this, on the basis that there was an agreement—I have been at pains to point out the nature of that agreement, and I do not want anything that I say to be stated here afterwards that in 1957 the representative of India said there was an agreement. I have to be extremely careful in view of the previous history. Here is what Sir Anthony Eden said. This is with reference to the Potsdam Agreement, where the Russians were insisting that on account of the Potsdam Agreement, the European community, and various other things, were not possible, and there was this clause and the other clause. This is what Sir Anthony Eden said on 1 February 1954 :

> "We are all pledged to give the German people the opportunity to reconstruct their lives on a free and democratic basis, so that they may take their place among the peaceful peoples of the world. This principle was embodied jn the Potsdam Agreement, and referred to by Mr. Molotov on January 25. We all have a duty to uphold it."—It is not as though they were just scraps of

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paper—"But that does not mean that all the provisions of the Potsdam Agreement are applicable today. The Soviet Delegation itself has said that some of them have been overtaken by events."—This overtaking of events is a political issue—"It is indeed clearly stated in the Agreement itself that it is intended to cover the treatment of Germany in the initial control period."

That is again another matter to be taken into account. If all this argument, all these resolutions and every-thing else were in terms of the cease-fire, hoping that they will be terminated quickly, then you get a different picture after nine years. Supposing this goes on for ninety years, are we still in this business? Then there is the following sentence of what Sir Anthony Eder said: "We have to look at the facts as they are today, and not as they were nine years ago."—The nine years is a coincidence.

If I quote Sir Anthony Eden, who is not a lawyer, distinguished as he is, I may perhaps be regarded as quoting lay authority on a subject on which I have just now quoted a Latin doctrine. Therefore, we come to John Foster Dulles, who in the days of less political involvement, was a distinguished political lawyer. And once a lawyer always a lawyer. This is what Mr. Dulles said on behalf of the United States of America as Secretary of State, on 26 January—I did not put down this date —

> "These decisions of Yalta, which my own Government shared, were understandable in the context of the day. The German war was still in full vigor and wars are not won by a spirit of tolerance."—"We should have learned that—"But it is sad that today, nine years since the German armistic, one of the parties to the Yalta Conference should attempt to revive the bitterness and hatred of those days and the cruel decisions which that hatred and bitterness occasioned."

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The implication of it is that when conditions change—in this case the whole position is reversed—a new position is created.

Now we come to Mr. Bidault who said the following :

"The Peace Treaty must be of such a nature as not only to provide a suitable conclusion to the war, but to avoid sowing the seeds of a new conflict."—This is one of those things which in the case of Kashmir the distinguished members of the Security Council may well bear in mind—"In my own view there are two fundamental considerations. The peace must not be a vengeful peace or an imposed peace. It must look to the future and not only to the past. It would be irrelevant to insist on too close an interpretation of the Potsdam Agreement, in the drafting of which France, as a matter of fact, had no part."

France as a matter of fact had no part in it, so it subscribed to it afterwards. So its action is something after the fact.

Now we come to Mr. Molotov. Mr. Molotov said the following on 1 February 1954, the same day as Mr. Eden spoke :

"According to these agreements the Soviet Union, the United States of America and the United Kingdom would act together in helping the German people rebuild their State on democratic and peace-loving principles. In due time France associated herself with these decisions, although Mr. Bidault now and then tries to avoid discussion of t hese agreed decisions. I suggest, however, that these agreements are no less necessary to France than, let us say, to the Soviet Union."

That is the statement on the other side. But then Mr. Molotov goes on to say :

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"We acknowledge that many points of the Potsdam Agreements have become outdated."

That statement, apart from any political views one way or another, has very considerable force.

For purposes of reference, these quotations are from United Kingdom documents issued by Her Majesty's Stationery Office, relating to the Meeting of Foreign Ministers of France, the United Kingdom, the Soviet Union, and the United States of America, held in Berlin, 25 January to 18 February 1954, Command Paper 9080.

These principles may all be regarded as universal, and it may well be argued, do they apply to the particular instance? We come to the United Nations Commission for India and Pakistan. What does the Commission say? It says :

"In essence, the problem of the withdrawal"—that is, part II of the 13 August 1948 agreement—"lies in the fact that the sequence for the demilitarization of the State, as contained in the Commission's resolutions of 13 August 1948 and 5 January 1949, is not adequate to solve the present situation. The situation in the State has changed; the resolutions remain unchanged."—That is what happened to the last resolution the Security Council passed—"Again in this question, the Commission endeavoured to find means of reaching an agreement without contravening the terms of the resolution; but, taking into account the changes that have occurred in the situation,"—that is what the Commission is saying; "taking into account the changes that have occurred in the situation"—"it found that the Governments were strict in adhering to the letter of those clauses which met their position."

The Commission says in the same report, in another paragraph :

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"Over a prolonged period. in a changing and dynamic situation"—and this is particularly true of the part of Kashmir which is still under the administration of Jammu and Kashmir—"and restricted by long-standing related clarifications which proved to be a real impediment to reaching agreement, the framework of the resolution of 13 August has become inadequate in the light of the factual conditions in the State. The Commission has been unable, therefore, to mediate much beyond what is today a rather outmoded pattern."

There are other instances for which you and I are responsible. One was the question of Trieste. Here was an agreement that something had to be done in a particular way. Something else was done and the Security Council did not regard that as a breach of its resolutions. The Italian Peace Treaty provided for the establishment of the Free Territory of Trieste. The Statute of Trieste conferred upon the Security Council certain functions and responsibilities in respect of administration of the Territory, including the appointment of the Governor in consultation with Yugoslavia. At its 91st meeting on 10 January 1947, the Security Council adopted a resolution formally accepting the responsibilities devolving upon it under the relevant treaty document. Here is an acceptance by the Security Council that makes it a party; a point to which my Government wants to come back. The Council, however, failed to agree on a candidate to be appointed as Governor and the military administration of the area continued. On 5 October 1954, the representatives of Italy, the United Kingdom, the United States and Yugoslavia agreed on certain arrangements concerning the future of the Territory different from those provided in the Peace Treaty, and the people seemed to have been comparatively happy. That is the history of Trieste.

There is another instance to which I want to refer. I do not have the time to go into its history but all the members, particularly the great Powers, will recall the discussions in Dumbarton Oaks, San Francisco, London, and other places

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on the founding of the United Nations when it was definitely laid down that any State that was a creation of Nazi power could not be a Member of the United Nations. That was the basis on which the United Nations was founded. On 9 February 1946 the General Assembly passed a resolution. India voted for it. Paragraph 1 of resolution 32 (I) of the Assembly stated :

> "1. *The General Assembly* recalls that the San Francisco Conference adopted a resolution according to which paragraph 2 of Article 4 of chapter II of the United Nations Charter 'cannot apply to States whose regimes have been installed with the help of armed forces of countries which have fought against the United Nations so long as these regimes are in power'."

This was a resolution barring forever the admission of Spain to the United Nations. Las. year, by unanimous vote, we admitted Spain. Why ? Because conditions had changed. The same rules were in power and the conditions of origin had not been changed by history. But the conditions of the world had changed.

I want now to deal with plebiscites for a moment—plebiscites in regard to general agreements. I would like to invite the attention of the Council to the history of plebiscites. There were large numbers of plebiscites which had been initially agreed upon, many of which were never carried out. The Covenant of the League of Nations, which was drafted in much greater detail and probably with greater reference to some of these matters, contains the law and the practice of the time. Article 19 concerns the reconsideration of treaties which have become inapplicable.

Certain plebiscites were required to be held by the treaties of peace. After the First World War, the method of plebiscites was used in a number of cases, and wherever those plebiscites could be held in a reasonably short time, they took place. There are five instances : in Schleswig in 1920, as recorded in part III of the Treaty of Versailles; the plebiscite of Allenstein and Marienwerder in 1920, also under the Treaty of Versailles;

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the plebiscite of Klagenfurt Basin and Upper Silesia in 1921; and in Sopron in 1921.

These were plebiscites that were actually held in pursuance of international decisions that were taken. But each one of them was a plebiscite that became effective soon after the decision. But when we come to other plebiscites the situation is rather different. There was an attempt to take a plebiscite in Teschen, Spisz and Oraba in 1920. That was in pursuance of a decision of the League of Nations Council of September 1919. There was a proposal for a plebiscite in Vilna in 1921. There was the plebiscite of Tacna and Arica provided for in the Treaty of Peace between Chile and Peru.

Now, what happened to them ? In the Vilna case, the conclusion with regard to the attempted plebiscite shows that when there were delays in carrying out the plebiscites, "the inevitable consequences of these delays is to make it impossible for the Council"—the League of Nations Council—"to adhere to its plan of a speedy Popular Consultation as originally contemplated". The Council "has therefore been compelled to consider whether the parties interested really and sincerely desire a Popular Consultation and if it would not be possible to devise some more simple and effective procedure." The result was direct negotiations.

Then we come to Teschen in 1920. This is an instance of plebiscite which has some relation to the present circumstances. When tension increases and racial hatreds flare up, it is not considered opportune to hold a plebiscite.

Then there is the classic instance of Alsace-Lorraine :

> "To hold a plebiscite now, the French maintained, would be to sanction the wrong done in 1871 by admitting the lawfulness of that act of violence."

It almost looks prophetic in these words.

The best authority on plebiscites in Mattern. He says ;

> "The plebiscite can render effective service only when and where such binding agreements, free from all force,

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have been reached in advance by the parties involved to the effect that a majority of a fixed and agreed proportion shall prevail, and where the plebiscite is employed solely to establish which side of the issue involved can muster this majority and where the resulting minority is assured of a fair degree of local autonomy and the enjoyment of its own language and religion.

"No state can, at the present time, from the point of view of constitutional law recognize the right of secession founded upon the principle of self-determination. By doing so it would invite its own destruction..."

I shall now deal with breaches on the other side. I am afraid I have arranged my time so badly that I will have to rush through this. Therefore I shall only itemize them. If we come back again I shall go into the details.

The first of the breaches on the part of Pakistan it withholding information from the United Nations that it was a combatant and that it was a party to the invasion, and allowing the United Nations to proceed under Chapter VI of the Charter, thinking an entirely different set of circumstances existed. In regard to this, there are a number of observations by the United Nations Commission, to which I made reference in my previous statement before the Council.

The next is with regard to non-withdrawal. By withdrawal is meant the removal of striking capacity in that area. It is not merely to put your foot on the other side of the frontier. Withdrawal of an army is the withdrawal of the striking capacity. Not only has the Pakistan Army not withdrawn, but the changed conditions in view of the imbalance of forces created by rearmament is such that withdrawal has become practically impossible.

I have already referred to the violations of the cease-fire agreement—the training of the "Azad" Kashmir irregulars, the importation of arms and the building of airfields for the taking off of fighter jet planes. But the most important part, from a constitutional point of view, of this violation—and my Government with great respect expresses its surprise that the

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Security Council has not given it attention—is the integration of the territory.

Now, I have, in the last two, or two hours and a half, analysed the documents paragraph by paragraph and have shown that Pakistan has no locus standi in this area at all, and that the only way Pakistan came there was by force and by violation of every moral law, of every political law, of every international canon of behaviour. Therefore it had no right whatsoever to incorporate the territory. The Council took a very strong view in regard to the Constituent Assembly, which had done nothing of this kind, which is only proceeding in pursuance of a legal action. But what is on the other side ?

The distinguished Foreign Minister of Pakistan asked at the last meeting : "Why has the Government of India become suddenly exercised over Chitral?" The reason is very simple. The Pakistan Constitution was adopted only very recently. And it was only when that constitutional act was passed that we raised this constitutional point. Article 1, clause (2), sub-clause (*b*),...

The PRESIDENT : I am sorry I have to interrupt for a moment, just to ask how much time the representative of India will need to conclude his statement.

Mr. Krishna MENON (India) : Sir I am doing my best; if I spoke any faster nobody would understand me. On the other hand, the Security Council appreciates that the Press of the United Kingdom, the United States, France and other countries in poorly informed about the situation. The Security Council passed a resolution at its 765th meeting without taking into account some of these matters. My Government has the duty to lay these facts and record them before you. We proceed on the basis that no Member State would take any steps in these matters without considering what are all its implications—what is past, what is present and what is ahead. That is why I am quite prepared to stop and do it tomorrow if that is the will of the Council. But I am quite prepared to go on. I have been conditioned to finish today.

The PRESIDENT : My only reason for asking the representative of India is that we have to find out how we are going to proceed. I would like to know if possible what the total

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time would be, because if it is very long we would have to adjourn the meeting until 8.30 this evening and then continue.

Mr. Krishna MENON (India) : The incorporation took place in the Pakistan Constitution and with regard to Chitral···

The PRESIDENT : I am sorry to interrupt. I did not get the reply to my question. Will it be a very long time ?

Mr. Krishna MENON (India) : I will try to finish in half an hour but I can give no guarantee on that. I am not trying to drag this out.

The PRESIDENT : In that case I think the representative of India can proceed.

Mr. Krishna MENON (India) : The accession of Chitral has been accepted by the Government of Pakistan and it is included in the arrangements in the Constitution as a State that has acceded. Now Chitral cannot accede under the terms of the Cabinet Mission Document or under the obligations of the British Crown in the past, because its name does not appear in the States that are entitled to accession either in the 1935 Act or thereafter. We are up against time—I could read to you dozens of documents of British residents, of the Secretary of State for India in London, where the suzerainty of the Maharaja of Kashmir over Chitral is accepted by the British Government. And what is more, the Maharaja received tribute from Chitral which received subsidies from him. As for Chitral the position is that it is part of Kashmir.

So the Pakistan Government, I do not know for what reason, because it amalgamated the others in other ways, received the accession from the Mehtar of Chitral—the ruler of Chitral—which he had no right to give because he was only a feudatory; he had no right of accession. And it was incorporated in the Pakistan Constitution.

The matter came up before our Parliament and we have stated the position. It is not as though we were taking any effective steps to undo this business or to violate the cease-fire agreements, but the incorporation of Chitral is against the resolution of 13 August 1948 and, what is more, a violation of the arrangements reached when the British left India.

I make reference to part I of the Constitution of Pakistan and article 1, clause (2), sub-clause (*c*) which incorporates

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territories which are under the administration of the Federation but are not included in either province. That is to say, anything that is administered by the Pakistan Government but is not one of the provinces becomes part of Pakistan. Now, the whole of these occupied territories is administered by Pakistan and so under article 1, clause (2), sub-clause (c), Pakistan has illegally incorporated these territories.

Therefore, there has been a violation of the cease-fire agreement a non-withdrawal and the incorporation of these territories. This applies to Gilgit, Baltistan, Hunza and Nagar, the whole of western Kashmir and all those areas which are on the other side of the cease-fire line. And therefore if the changing of either the status jure or anything else was wrong in so far as the Constituent Assembly was concerned—which we deny—here is a major sin. The Security Council has been faced with this fact, that the territory over which, under the resolutions of the United Nations Commission, Pakistan had no right whatsoever, which Pakistan was supposed to vacate, where only local authorities can function, is incorporated in the territory of Pakistan.

But the most difficult and the most important of these violations are in regard to the campaigns that are carried on in Pakistau itself. Now, this has varying tempo, sometimes it is more, sometimes it is less. It is not only aimed at the personalities of India, but also against the whole of our country. "The liberation of Kashmir," said the Governor-General of Pakistan on 19 September 1956 "is a cardtnal belief of every Pakistani. It is an integral part of Pakistan, and Pakistan would remain incomplete until the whole of Kashmir is liberated."

The "Times of Karachi" carried the Pakistan Prime Minister's speech on the tenth Independence Day. "I am ready for the liberation of Kashmir," he said, and added: "but I want the people to get ready," The freedom of Pakistan would not be complete without Kashmir, he asserted, and exhorted the people to acquire the spirit of unity. He said the Kashmir dispute was now going before the Security Council, but asserted that the nation would not rest there (S/PV. 762/Add. 1, annex II, sect. 1). I want to draw your

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attention to that phraseology : "The nation would not rest there." So the Security Council is only part of the procedures to carry out other designs.

The Prime Minister made another speech in which he said the following :

> "The crowd listened to the Prime Minister and cheered him when he declared that he would not rest until the Kashmir Moslems were freed and that he would not allow his countrymen to become slaves, even if they were to live without food or clothing."

The Governor of West Punjab said :

> "So long as a single Pakistani is alive, nobody dare snatch Kashmir from Pakistan by force . . . If the problem is not settled immediately, the whole of Asia would be engulfed in the flames of war which might lead to a world conflagration." (*Ibid.*)

He also said : "We would not mind being cut into pieces but will certainly conquer Kashmir." Here is another statement he made immediately afterwards : "We will have to exhibit our strength if we want to take Kashmir" (*Ibid*).

The Chief Minister of the Northwest Frontier Province said :

> ". . . not only the entire Pathan population"—these are the people from whom the hordes came before—"of Pakistan and the tribal areas will rise up for the holy Jehad"—the holy crusade —"in Kashmir, but our brothers from across the Afghan frontier will also throw in their lot with us for the cause". (*Ibid.*)

If that is not an incitement to war against our country, I should like to know what is.

I shall not read in full the statements of important persons and religious leaders but I shall refer to them. Here is a statements by one of the most important leaders : "Today Pakistan is standing on the verge of war and sooner or later she will have to go to war against India" (*Ibid.*).

There are other newspaper articles, but I do not propose

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to read them. Since the Security Council passed its resolution, there have been considerable demonstrations in Pakistan, and the whole tenor of these is the conquest of India, that is to say, the leading of armies into our territory : and there is the exhortation to the people to carry on this campaign. It says that it means fear of God, financial sacrifices by every individual, whether trader, master or clerk, getting together and making a firm resolve to unite the nation. This is one of those things on which India has definitely given its pledge, and no responsible person in India would ever say a thing like that. It urges purification of the heart and feelings of unity. Everyone should be overflowing with excitement and make it a point to assemble at fixed places in their respective towns. In all these public meetings Pandit Nehru would be asked to hand over Kashmir by a given date and give up forth-with the annihilation of Indian Moslems and enmity towards Pakistan, "failing which batches of ten lakhs, (meaning a million) would march towards Amritsar and Patna".

These are some of the slogans, which are officially based. They are sponsored, because these demonstrators are received by the Prime Minister, he spoke to them. I cannot read the Hindustani, but I shall read the translations. Here are some of the slogans :

> "If Nehru is is finished, that would be the end of Congress, and the capture of India would become certain."
>
> "Ten lakhs should get prepared for the march towards Amritsar."
>
> "India shall be conquered in 1957 only if every person gives up falsehood and fraud."—That was a good idea.
>
> "If every person would make some sacrifice, India would be conquered."
>
> "India is bound to be couquered after these ten years of sufferings. Get ready."
>
> "Get united. Get righteous. India will be conquered."

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"Leave all the parties and turn Moslem India will be captured."

"Give up all rivalries, India will be conquered." These are all different posters.

"Weigh correctly. Make an honest living. India will be conquered."

Then there is another thing : salutions to every person they meet, "India will be conquered,"

Shah Rahmatullah Wali predicted that Moslems in 1957 would conquer India. "There, march. Once India is conquered all ailments will end."

"Fulfil your promises. Don't tell lies. India will be conquered."

"Do away with all your enmities during 1957, if India is to be conquered."

"Settle all your mutual affairs. India will bc conquered."
"Observe complete 'Hartal' on date announced. if India is to be conquered,"

I have quoted only some of these. There are some which it would not be aesthetic to read in the Security Council. So this vast campaign of religious hatered and fanaticism is fanned. That is the position.

Now I think it is necessary for me to state to the Security Council the position arising from all this. In order to obtain an end of the aggression and to implement the complaint on which we came here, we joined in every endeavour that was possible. The view that is taken with facility that we committed ourselves to somethihg without pre-conditions is, I submit, wrong. It is not only wrong, but I should like to quote to you the appropriate provisions of the Charter, I refer to Article 24, paragraph 2, I shall read only one sentence :

"In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations."

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The Purposes and Principles of the United Nations are, as far as is relevant to this, set out here, and this is the important part :

> "...and to bring about by peaceful means, and in conformity with the principles of justice and international law...".

I submit that the considerations of international law that I have pointed out to you, the considerations of justice that I have pointed out to you, the desire of India to live as a democratic community giving equality to our peoples to enable a large democracy with nearly 200 million voters to demonstrate to ourselves and to the world that way of life is possible-that is one of the treasured objectives our people have.

Therefore, the further article in the Charter, referring to this particular matter, which is binding upon our friends opposite, is Article 2 2, paragraph 4 :

> "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

I am directed by my Government to say that it has been sometimes said, perhaps with a feeling of apprehension, that the peoples of India and its Government have not reconciled themselves to the idea of partition and the existence of Pakistan. I tell this Council what we have told all the world : that we have no desire whatsoever to undo the partition. It is the price we paid for our independence. We did not like it. Nobody likes his country to be cut into pieces. But it was better than civil conflict at that time : It was an agreement we entered into among three parties, and that agreement we shall honour. We have no desire to reunite India as before partition. In fact, we have enough problems of our own. We have enough headaches and difficulties, and we do not want to take on more.

So, I want to make this solemn statement that any propaganda, any statement, any fear, any apprehension, any suspi-

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cion that exists in anyone's mind, that my country, my Government, or our people have anything but the desire to live in peace with our neighbours does not correspond with the truth.

We have come to so many agreements with Pakistan on various matters. They are suffering; we are suffering. We have families that live on the two sides. We have lost a lot of territory in the sense of the constitution of our State but we are getting the people. There is no responsible person in India—never mind the political parties—there is no responsible body of opinion that wants to venture on an act of hostility. I ask you to read the Indian Press and the statements of Indian leaders and compare them with what have said about the other side. I confess that there have been one or two student demonstrations.

Our leaders have done everything they can to persuade our people, and successfully persuade them—we are a free country, and we cannot stop them—not to indulge in expressions of hatred either toward Pakistan or toward the United Kingdom or toward anybody else they may think is involved in this matter. But the main thing is this : We have no desire to undo the partition. We do not regard that as a pro tem affair. We agreed to it with our eyes open. We knew the consequences. We have suffered economically, politically and culturally. We have created problems for ourselves. But, if we were now to try to do anything, those problems would become worse.

We recognize Pakistan as a sovereign State. And not only do we recognize it, but it is a sovereign State. We recognize all its attributes of Sovereignty. We have no desire to interfere in its affairs. We are not interested in its form of government. It can have elections, if it wants them—and it does not have to have them, if it does not want them. We only want to be left in peace. We will not at any time yield to provocation to use force. But if our territory is violated, we shall look to the Security Council to the Charter to the public opinion of the world. And my country has given continuous evidence, tangible evidence, of its loyalty to the Charter, of its willingness to take on responsibility, of its readiness to

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take on unpopular roles in what it considers its duty in regard to international obligations. And therefore any suggestion, from whatever quarter it may come, that India nurses some hatred, that Kashmir is a jumping—off ground for something else or part of a score that is not settled, is entirely unhistorical.

I want particularly those who have been closely related to us in the past, who know some of the background, to bear this in mind. India will honour its international obligations. The only obligations are the two resolutions of the Commission. Those two resolutions have to be judged in the light of the words in them, the spirit in them—I do not say we will be going beyond the words or what they intend—which can be reasonably drawn from the printed words of the time and the assurances given as solemn undertakings. And we shall honour our undertakings. But time has passed and certain things have happened. Our position is that the State of Jammu and Kashmir is Indian territory; it is part of the Indian Union.

We came here with a complaint of aggression. In our submission, it is the duty of the Security Council and the duty of Member States through diplomatic channels, through cooperative action or individual action, to exercise their influence in order to put an end to this aggression.

My Government invites the representative of any Government to go into Kashmir. No one will stop you. You can go anywhere you like—ask anybody you want. We have neither silk curtains nor bamboo curtains nor anything of that kind. You have to obtain permits and pay for your living. But, apart from that, it is an open country, which is visited by thousands of tourists including foreign journalists. It is a territory where, for a long, long, long time, there has been backwardness.

It is no argument on the part of my Pakistan colleague to come and tell us that the Maharaja of Kashmir paid the British Government—what was it ?—a half million pounds, and therefore bought this piece of land. I ask Mr. Lodge whether the United States Government would be willing to take that view about Louisiana and return it to France, or to abdicate its reghts over Florida and return it to Spain, or over

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Alaska and return it to Russia, or over Rhode Island and return it to whomever it belonged to. Purchases have been made in the past—and, if there has been any immorality about the purchase, we were not the rulers at that time. Her Britannic Majesty, Queen Victoria, held the responsibility. And we are not shrinking the responsibility, because we are her successors in title. So whatever has happened there has happened when Pakistan and we were one country—and we cannot now separate the sheep from the goats.

I submit the views of the Government of India to the Security Council in the firm belief that, above all things, it has to be remembered that there is prosperity in the land of Kashmir. I have not been able to read the various commentators—Scandinavians, who are traditionally neutrals, have been out in our country and have seen these things—but there is peace and prosperity, there is development of democratic institutions among a people who have been steeped in ignorance and backwardness for generations and have had no industries, no development of water power, no exercise of the franchise. That has been one in association with a country where not only are there 200 million people entitled to exercise their franchise but where, over and above that—in our land of India—there are probably 200,000 bodies where people exercise power in that way, where every single person from the President to the lowest village official, is elected.

Any unsettlement can only be based on the appeal to non-secularity; it can only be based on this appeal to religious prejudice. The only "claim" that can be put forward on behalf of the Pakistan Government, in regard to Kashmir' is that the majority of its population is Moslem. And my Government—totally, for all time—repudiates what is called the two-nation theory. We will not accept as the basis of our State the religion of a people. The United Nations is a secular organization. The majority of you would not discriminate against a Catholic or a Protestant because such a person happened to be in the minority. But here is the Constitution of Pakistan, which says that, if a man does not belong to the Islamic religion, he cannot be the President of the State. (I

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invite you to read an article by Mr. Sulzberger, of the "New York Times", a paper that is consistently hostile to us on every question—an article which refers to the position that there will be no democracy in Pakistan. I am not quoting him as an authority; I am quoting him as a friend of theirs. So there it is.)

Whatever there may be of right or wrong in a problem, if there are difficulties in a situation—and I repeat : a situation —it is necessary to find means of settlement.

I ask the President and the members of the Security Council whether, in the ten years that my country has been represented here, it has been found wanting in attempts to reach these solutions. Can the Government of Pakistan tell us that, in very complicated matters of other kinds, we have not gone through a great deal of negotiation and settlement along with it, and that we have not bent over backward to find settlements ? We are in the United Nations with a record that is clean.

On the other hand, there is the crime of invasion—and that is a crime that cannot be tolerated. We have not asked that anybody be branded an aggressor. Why ? It may be a mistake on our part.

I have deliberately not referred to suggestions that have been made by the Foreign Minister of Pakistan, as to what he regards as solutions, because they are not solutions and they are violations of the Charter and international law and they are a mockery of the undertakings that rest on the shoulders of the Pakistan Government. My Government does not regard it as right, so far as its duty to the Security Council is concerned, to discuss those proposals unless the Security Council wants to discuss them. So far as we concerned, there are no proposals. We have given the solemn undertaking that we shall not use a gun, we shall not fire a bullet, we shall not move an aeroplane over the cease-fire line to assert our rights, that is to say, we shall not determine by force the future of that part of our country which is under Pakistan occupation. We shall seek to solve every problem peacefully, but our peacefulness is limited by the fact that we shall not brook aggression upon our territory. And we look to each one of you to stand with

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us if there is a violation of one square inch of Indian territory, because we are loyal Members of the United Nations. To each of you we are bound not only through the United Nations but by bilateral ties and by appreciation and respect, even when we are in fundamental disagreement. And I submit we have the right to look to you in a matter of this kind.

It is not the kind of problem where a resolution can be passed and it can be said that somebody disobeyed—I told you about the nature of resolutions. The only resolutions that are binding on us would be resolutions under Chapter VII of the Charter, and this problem is not under Chapter VII. But I am not arguing legalities, I am not the defendent in this case, I am the plaintiff, although it may not so appear after these seven, eight or nine years. That is because we are a mild and meek people, which is shown by our patience in this matter, our forbearance, our desire to explore everything. The Security Council, if I may say so, and if you will pardon the expression, has no right to think that our country is going to throw overboard the principles of the Charter, our insistence upon a secular State, the fundamental rights that are guaranteed to our people under the Constitution, the freedom that our people have won, which has also brought freedom to Pakistan, and the terms of co-operation with those who are our erstwhile opponents with whom today we can disagree and still remain friends. It is those things that we value and that is why my Government has given me instructions to present this case as fully as possible. What has been committed in Kashmir is a violation of our territory; and any imprudent action could plunge the whole of our continent into bloodshed and civil war.

It is very wrong for the Foreign Minister of Pakistan—who ten years ago was a follow citizen and even today is a very close friend—to tell us that these are threats. We utter no threats. What do we want to threaten anybody for ? We are a very large country with many problems to tackle. We only want to be left in peace. We have no desire to stop their waters or their money or their trade or anything of that kind. To the extent to which our home responsibilities permit, we are prepared to co-operate. It is not we who have turned our faces

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away from the sub-continent of India. It is Pakistan that has turned away from the continent of India. We still regard it as part of this ancient land whose heritage is common to both of us.

It is in that spirit that we ask you to consider this problem and to give it all the consideration it requires. On behalf of the Government of India I am asked to pledge our faith that we shall never be found wanting in the methods of exploration, but I think it is necessary to take a realistic view that the resolution of nine years ago, the conditions of nine years ago and the slogans of nine years ago—and if I am not out of order I turn to my colleague of the United Kingdom—and the newspaper campaigns in different countries will not shake our faith in what we regard as the righteous course of action that we took when we came here.

I want finally to ask: Why did we come here? Not because we were a weak country. The British left us a militarily strong country. They left us immediately after the war with nearly 2 million soldiers, a great part of them only just demobilized; a military position superior to that of Pakistan. Militarily we could have solved this problem any day, but that would not have been a solution. That is why we came here, and if this aspect of the problem is not taken into consideration it is not India alone that suffers—India's suffering will be momentary—but the Charter, the United Nations, which suffers because this is a penalty which is imposed upon those who will obey the law. We came here in full trust in the United Nations. For nine years we have been pushed from pillar to post and we have been castigated for allowing our people to express their will.

Do all you democratic countries say that the four and a half million of Kashmiris should have been ruled by the officials from Delhi without having the opportunity to express themselves in Parliament? You talk about those people who are imprisoned; is there any country around this table who has not got some skeleton of this kind in its cupboard? If there is, it is a happy country and we wish it well.

Let anyone show me anything that Sheikh Abdullah has said from the time when he became the leader of the national

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movement in Kashmir—which started as a Moslem movement and which he gave up saying : it is my country. Moslem or otherwise; he would not stand for that. He went to the Constituent Assembly and plainly offered three alternatives : you can go to Pakistan; you can remain independent or you can go to India—and he rejected the first two. I challenge anyone to show me one phrase uttered anywhere by Sheikh Abdullah—and he has now become the pet idol, although before he was called a quisling—I ask anyone to show me one phrase where he says he wants to become part of Pakistan.

If we are told that we did not permit anybody in Kashmir to say that there should be a plebiscite, I would say that there is nothing further from the truth than that. One of the political parties in Kashmir which was allowed to fight in the election, which was registered as a party, is called the Plebiscite Front. Its leaders are out, they campaign, they use even the mosques for propaganda and we have not denied them anything. How could we, with 70,000 people a year going there, with many journalists in the place at any time, even if we wanted to? What is more, what would be the reaction upon the rest of India? Our country would not stand for that and if you suggest to us that there should be unsettlement, we say that unsettlement is the worst thing that the Security Council could wish for, not only for us but for the Asian continent. And I look to my Asian friends to think of that problem as well.

The instability of any part of our world, which has just emerged into national birth, is an instability that will affect everybody. Today our voice is not heard in high circles in Pakistan but we are not without friends in that country. Our view is that we have our own troubles and they have theirs. If we can help them we shall do so, we do not want to hinder them. That is why for two years we have been sitting in Washington under the auspices of the International Bank for Reconstruction and Development discussing canal waters and so on and it might amuse the members of the Security Council to know that the greater part of the waters of the Indus runs into the sea without going anywhere. But we are prepared to

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meet with Pakistan and we have met considerable financial losses in that way.

We cannot get away from the fact, however, that our country has been invaded and that for nine years we have never used any phrases such as : "After the Security Council, what ?"—because this is not the way to look at this problem. We are part of the Security Council even if we are not members, because all of you here represent us; and therefore we say there cannot be any solution to this problem except by recognizing the "original sin". We are prepared to have discussions, to find ways and means, but we cannot find those ways and means without such recognition. This is not obstinacy; we have tried everything. This is the only way to deal with this problem and I believe Pakistan and ourselves can come to agreement on that basis.

My colleague quoted the Holy Koran. It is not the monopoly of the Moslem, and I will quote it for him—and not in the spirit in which it was quoted to me. One part of it, in the English translation, says :

> "And whoever committeth a crime, committeth it to his own hurt. And God is knowing and wise.
>
> "And whoever committeth an *involuntary* fault or a crime, and than layeth it on the innocent, shall surely bear the *guilt* of calumny and of a manifest crime."

160. *Text of the speech made by Mr. Krishna Menon (India) in the Security Council meeting No. 769 held on 15 February 1957.*

Mr. President, I believe you reminded the Council this morning that its proceedings would centre around the draft resolution [S/3787], or at least I gathered that impression. Since there have been reasonably long debates on the general issue, I propose to confine myself to the draft resolution initiated by the United Kingdom and the United States and sponsored by Cuba and Australia in addition.

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The operative part of this draft resolution requests the President of the Security Council, the representative of Sweden, to examine with the Governments of India and Pakistan proposals; to visit so far as we are concerned, India for this purpose; and invites the Government of India to co-operate.

Before I enter into the substance of this matter and in order that the position of my delegation, my Government and my people should be understood not only in the Security Council but in the outside world, I should like to state here and now that so far as we are concerned, Mr. President, your counsel, your country, the high office you held and your person are held in high respect in India, and you would be welcome at any time. But the question of the functional character of the operations you propose to undertake would be another matter, which we would have to discuss in substance. Therefore, the traditional hospitality of our country would not be disregarded, even in the face of a Security Council resolution with which we may find ourselves in disagreement.

Having got that out of the way, I would like now to refer to the subject matter that is before us this afternoon. There have been several speeches. The majority of them, if not all of them purport to be based upon the statements made by India and Pakistan and, for the greater part, refer to the statement that I made in this Council. Therefore, it becomes necessary for me to deal with the more relevant parts of them because it is impracticable to deal with them paragraph by paragraph. First of all, I do not have the script with me and, secondly, it will become interminably long. After that I will try to examine the draft resolution before the Council and deal with its more important aspects as far as the text concerns us.

Next I will try to convey to the Security Council what its consequences would be. I do not mean the short-term consequences of how members of the Council vote. What would be its consequences with respect to peace and stability in our part of the world, with respect to public opinion not only in India but in South East Asia, with the exception of parts of Pakistan

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and with respect to the purported objective of the draft resolution itself? These are obligations I owe to the Council. Some of them may not be welcome to those who are the authors of certain observations. But my duty here is not to reflect the will of other Governments but to reflect, as far as I can, the will of my people and my Government and to convey to you the state of affairs.

It is not so long ago that, for the sake of peace and in order not to drive certain issues to differences, we came to an agreement with the then British Government of the day to station a boundary force under a supreme command on the Indo-Pakistan frontier in the West. It was one of the great tragic decisions we took, largely buying that time in the necessities of the situation. I do not think either of our countries had made a more sad decision because as the result of that came the great slaughter of 1947, with respect to which my Prime Minister decided to dissolve the force.

The first statement by a Council member was made by the respresentative of the United Kingdom, for whom we have very great respect. With his country we had relations of one kind, and we have relations of another kind today. Those relations have been strained considerably by the British adventure in the Middle East and now their adventure in regard to Kashmir, but, so far as we are concerned, we would do our best not to allow these individual actions on the part of the United Kingdom Government—not of its people, fortunately—do come in the way of the more substantial relations that should exist between our countries. But I would be doing no service to this Council, or indeed to the United Kingdom or to the very many friends that we have there and with whom we have been in such close relationship if I did not indicate to them the enormous, deep and very vehement feelings in India at the present time in regard to the United Kingdom. The United Kingdom might easily retaliate by saying: "We felt somewhat like that when you took a certain position in another matter." Of course, that is one way of looking at it.

Sir Pierson Dixon, after tracing the history of this matter, said that finally, after the failure of various missions, to which I shall come back in a minute, including that of

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Mr. Graham, whose absence from this table my delegation regrets—even though there is nothing very much in Mr. Graham's report that assists the statement of the position that we made, because he did not examine that—the breakdown of the direct negotiations was due to extraneous causes. We had, during the course of this debate, largely because of our concern in regard to Indo-American relations and to avoid introducing issues of the "cold war" outside the Kashmir question and, what is more, in the hope that the present lapse from fortitude and wisdom in this matter is temporary, not referred to them, but the extraneous consideration to which Sir Pierson Dixon refers is the military agreement between the United States and Pakistan.

Our views on this matter are very well known, and there is no doubt—and again one must state the facts of the case—that the added military strength of Pakistan by the supply of very considerable quantities of war material to that country, of which we have some knowledge, has certainly altered the situation. But it would be equally wrong to say that that was the only changed condition, or indeed the reason for the direct talks between Mr. Mohammed Ali, the former Prime Minister of Pakistan, and afterward someone else, and the Prime Minister of India. It did weight considerably, there is no doubt about it. What is more, we at that time said that the relation to Kashmir we could not consider the United States as being neutral, and for that reason, and with the utmost politeness, we suggested that observers of United States nationality were not the best people to serve on the cease-fire line. They responded with equal politeness, and we resolved that situation as between two countries who have no desire to exaggerate a difficulty. I regret that this matter has come up, because I have been at great pains to avoid it, but it was referred to by a close ally of the United States, and it is not my practice to run away from any argument that has been put forward. So that is that. So this extraneous relationship, if it is one of the factors, was not the factor that led to the breakdown of the negotiations.

Sir Pierson Dixon made other statements. I picked out that speech because that is the keynote speech, as they call it in this country. The other speeches follow more or less that

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line with the exception of the speech from Colombia. That is, they lay stress on what is called demilitarization. This word "demilitarization" for this purpose must be interpreted with the connotation that it has derived through the years, by negotiation.

In spite of the Security Council having heard my voice for so long, perhaps the members would be so kind, even if they did not read 1 per cent of the papers before them, which is impossible because there are so many of them, as to at least refer to the resolutions of the Commission and point out to me any place where there is reference to demilitarization. Demilitarization is a phase and a problem, as it is now pinpointed, which arose as one of the methods for creating the conditions under part II of the resolution of 13 August 1948 [S/1100, para. 75]. It is very important for us to refer to this in view of the other suggestions in the resolution. The whole of the picture is sought to be covered by demilitarization, but we are prepared to face this in this way.

When either the United States or the United Kingdom, speaks to us about the importance of demilitarization, they have to take into account certain factors. In Kashmir, which the legitimate Government of Kashmir administers, there are units of the Indian Army. I want to explain this. The Indian Army in Kashmir is not a foreign army any more than we have a foreign army in Bombay. The Kashmiris pay for it like everybody else. That is, certain units of the Army of the Indian Union are in the Constituent State of Kashmir. They are easily identifiable. They have no uniforms that are not Army uniforms. Their divisions and their numbers are well known. In addition to this, we have in Kashmir approximately 6,000 men belonging to the Kashmir militia. These are published figures or, if they are not, I shall publish them, and I take the responsibility for doing so. There are 6,000 men who belong to the Kashmir militia, who are a kind of territorial force, a State force, largely of an armed police character, intended for internal security and the like. That is the total strength of our military position in Kashmir, far below what it was at the time of the cease-fire.

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On the other side, according to our information, which normally is reliable, in regard to Pakistan military dispositions, there are forty-five battalions of the "Azad" Kashmir forces. There were thirty-five at the time of the cease-fire. Now there are forty-five battalions of the "Azad" Kashmir forces, officered by men of the Pakistan Army. If the Security Council has any doubt about it, we shall some day be willing to furnish you their names, their ranks and their particulars from available sources. They are officered, trained and equipped by the Pakistan Army. They are well-trained soldiers. There are artillery regiments, cavalry, a tank corps, and so on. There were thirty-five, and now there are approximately forty-five battalions of these troops. In addition, as Mr. Firoz Khan Noon admitted the other day by implication, the Pakistan Army itself is there, because he said he would withdraw it, and you cannot withdraw what is not there. Therefore, in addition, there is the Pakistan Army itself. When we speak about demilitarization, we have to think of this military element and what is demilitarizable.

Add to that two other factors. There are the commandos that are being trained, of which there are 800 in school at all times. When they are finished, they are thrown back into the population. They are another military element in the situation just across our border, mainly in the population. This is not in the whole of the Pakistan-occupied area, because over the whole of the Pakistan-occupied area, in Gilgit, Baltistan and so on, these factors do not apply so much, but in this small area where there are half a million people.

In addition to that, as I pointed out the other day, there is today an army in Pakistan which is out of proportion to the relations established at the time of partition. Pakistan has well over 200,000 men equipped not only with the normal equipment that comes from the United Kingdom under the usual purchase arrangements, but with the considerable supply of military material that comes from the United States in pursuance of military agreements, which are not directed against us, so far as the United States is concerned—and we accept that situation so far as the United States is concerned. They are within very short distances of our frontier. I give the

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Security Council the mileages the other day. [764th meeting, paras. 119 and 162].

Therefore, when we speak about demilitarization we must take all these elements into consideration and set them side by side with two other factors. You gentlemen here representing the Member States are not merely concerned about passing resolutions but about their vast social, political and world consequences. Let us set these factors side by side with two others.

One of these constitutes the remarks made by the representative of Pakistan outside his printed text when he first spoke here. He stated :

> "Here I would like to say that it is sometimes argued by India that everything is peaceful, so why bother about Kashmir ? But I warn you"—he warns the Security Council—"that is a calm before the storm. Everything is not peaceful. We have just seen a telegram which states that, on 11 January, our Minister for Information, Mr. Amir Azam Khan, made a statement in Karachi that the Indians have massed their troops on our border." [761st meeting, para. 105.]—a statement which I contradicted the other day.

The representative of Pakistan then went on to say :

> "Please do not be misled by the fact that we are peaceful and that we want a peaceful solution." [*Ibid.*, para. 106].

This is exactly the pattern, and there may be those who remember this fact, that occurred in 1947. We were told : "Wolf, wolf—"—at that time—"it is coming, it is coming ; after all we cannot stop it". And then it came and the Pakistan Army came afterwards.

The "Daily Telegraph" of London—a paper which is not friendly to India—carried on 11 February 1957 an interview with Sardar Abdul Quiyum Khan, President of the "Azad" Government. I shall not read the whole of the interview, but this is a part of what he said :

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"It is coming to a fight in Kashmir"—this is issued not from 'Azad' Kashmir, but from the Ministry of Kashmir affairs in Karachi—"whether the people like it or not. We have no alternative left and I have told the Pakistan Government this. I had expected we should fighting by December or January but certain factors intervened."—The fact of the United States elections, and therefore the Security Council was put off. "I now think it is certain there will be fighting this year, perhaps even in a few weeks."

When the correspondent raised the plebicite issue; the President said :

"Recent Security Council notes were encouraging politically"—that is a also borne out by the testimonial to the United Kingdom Government by the Pakistan Prime Minister, to which I shall refer in a moment—"but Kashmiris want to see some results at last, if not by diplomacy then by war. India will never agree to a free plebiscite. India had occupied most of Kashmir and had poured money into her organization there. She knew that Kashmiris on a free vote would never opt for India, so Nehru would be crazy to agree to a plebiscite. I don't think he is crazy."—That is the only part of it that is true.—"It will be a people's war : we know our country. In Kashmir we can give the Indians hell. We are much better equipped"—this is another truthful fact—"now than in the former fighting when we often had not more than five rounds per man."

The President went on to point out that "Azad" Kashmir was not a party to the cease-fire agreement—this again is the pattern of 1947—and therefore was not bound by it. He said :

"If the United Nations would leave the matter in the hands of 'Azad' Kashmir fighting men for just a few weeks, the question would be solved. Nehru only under-

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stands that kind of language. He would come running to the United Nations begging them to intervene on his behalf. We can turn both flanks of the Indian."

This is only a sample of what is going on. I want to report to the Security Council that this type of wild statement is being made at a time when a vast election campaign is going on in India, where we are addressing, as I stated the other day, an electorate of 200 million people. I state to the Security Council in all conscience that the efforts of our leaders at the present moment are to exercise restraint upon the people so that they should not become inflamed. I could quote to the Council, if there was time, the speeches made by the Prime Minister in this connexion, when he said that if misfortune should befall us by way of attack, we should meet it with fortitude and calm, but there was no need to get excited.

Normally this does not very much matter, but we had a dress rehearsal and we had a performance afterwards, so that this is a repeat performance. When the Security Council passes resolutions which have the effect of unsettling events—unsetting events in Pakistan, in the occupied areas, in Jammu and Kashmir and in the whole of India—then it takes upon itself a responsibility which, fortunately for itself, it will not have to shoulder, while the people of India will have to shoulder it. I hope that my good friend, General Carlos Romulo, the representative of the Philippines will not say that I was admonishing the Council. I shall come to that in a moment.

That is the background of what the representative of Pakistan refers to as the decrease in tension. Unless this is measured in reverse terms with the whole thermometer upside down, I do not see how this can mean a decrease in tension. There is a decrease in tension between Pakistan and India in certain other matters, particularly between India and Eastern Pakistan in respect of which we have concluded trade agreements and where the populations are less inflamed by these matters. Therefore, when we speak about demilitarization and a decrease in tension, these matters have to be understood.

While I am on this point, I might deal with one other

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matter, because my Government is very anxious and very concerned that no statement of ours or any errors of omission or commission should afterwards be charged up to us as a commitment. We have suffered by moderation. We have suffered by reasonableness in our proceedings before this Council. Every time we considered a hypothetical proposition and every time we have agreed to embark upon an exploration, it has been charged up against as a commitment. Therefore, I want to say here and now that whatever mathematical calculations were made with regard to 6,000 or 3,000 or 12,000 or 21,000 in the various previous negotiations, these no longer hold true, because no offer that is not accepted is a binding contract, either in the case of individuals or in the case of nations. Otherwise we should have a number of floating commitments, and no country would know where it stood. In the course of long negotiations, all kinds of offers are made. If the Secretary-General were to be committed to the many suggestions which he must have made in the past sixty days then he would be in an awkward position. The same thing is true with respect to a government.

Therefore, I want to say here and now, Mr. President, that if you were to go to India, or if anyone else were to go, it would be no use telling us that we agreed to this and that the time and that "now therefore you are committed to it." We agree to nothing—we discuss all these proposals. They must all be considered, as with any problem, in the context of the time. We agree to things to which we are parties.

That brings me to the next propositions put forward by the representative of the United Kingdom. He said, quite rightly, that it is common ground between Pakistan and India that the only obligations appearing in this matter are the resolutions of 13 August 1948 and 5 January 1949 [768th meeting, para. 13]. But Sir Pierson Dixon would feel flattered by the fact that I was educated in a system for which he has very great appreciation and therefore I take care to be precise in language. I said that the only obligations we "had" undertaken—and, although English is rather sparse in grammar, it does have tenses—were these two resolutions. It is quite true

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that my distinguished colleague put it differently. I do not say that his language is more precise, but he has more friends around this Council than I have, and therefore he does not have to be so much forewarned. And I suppose that General Romulo would say that I am, by nature, suspicious. Of course, he is wrong.

At any rate, we say that these resolutions of 13 August 1948 and 5 January 1949 are our only engagements—and I use the word "engagements" very deliberately. I said that they could be elevated to the form of treaties if they were formal. But what we said was that the only international engagements are the two resolutions of the Commission—and this is recounting history at the present time. I do not object to the statement made by the distinguished representative, but it bears the inference that this thing stands by itself, without any further progress in that matter or any past history. Those engagements have to be understood in the context of all that was said at that time. That becomes necessary because someone is likely to say : "Well, here are these resolutions. It is quite true that you did not get anywhere with them. Why don't we start on them tomorrow morning ? Well, tomorrow is Saturday, and on Sunday we go to church, so we will start on Monday". That would not work because you have to take all the surrounding circumstances into account. And that is why it is necessary to repeat very briefly the fact that the position of the Government of India, as stated the other day by the Prime Minister in a speech at Allahabad, is that Pakistan has violated the cease-fire agreement. That is a far more grievous charge, and we make that deliberately : that Pakistan has violated the cease-fire agreement by the introduction of military personnel and materials into the area and by the annexation of territory. And therefore, when the first part of the agreement stands violated, the consideration of the second part becomes very, very, very subsequent. That is very bad English—but it becomes very subsequent.

Therefore, the observation made by the representative of the United Kingdom must be taken in the context, first of all, of the explanations that I submitted on behalf of my Govern-

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ment and the fact that, since the conclusions of that agreement, there have been violations of the part I by the accentuation of the forces on the other side of the cease-fire line and by the assimilation of territory.

The President of the Council is what might be called an example of the European neutral. I would ask him, in all conscience, since I am entitled to address a question to the President: How is it that when the Constituent Assembly of Kashmir, under our constitutional procedures and using only the pen and not the sword, working over a period of five or six years and proceeding from a legal instrument about which you all say you are neutral—nobody has challenged it so far—writes a constitution which does not alter any of the physical facts, that is called annexation, whereas the elven members around this table never turned around and asked the Pakistan delegation under what title its Government annexed these territories of 42,000 square miles? The latter was barefaced annexation.

Here I propose to cite to you assurances, documents and statements made in the Security Council time after time, that the sovereignty of the Jammu and Kashmir Government remains inviolate and that neither the Commission nor the Council will do anything to alter it.

That leads me to the third point, Sir Pierson Dixon referred to engagements. He is a friend of mine, and I am sure he will forgive me for centring the argument around him (in a sense, it is an expression of great esteem). I said the other day that this engagement bound our two countries. Since this is probably my last main intervention during this episode of the discussion of this item, I shoold like to say that there are three parties engaged in this whole process.

The Security Council is a party to the resolution of 13 August 1948, and we of the Government of India have the privilege and the right to ask the Security Council what it is going to do about the violation of part I. The Council is very quick in passing resolutions about the Constituent Assembly and being misled into acceptance of what was put out in a "crisis atmosphere". How is it that no question had been

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asked by the eleven nations represented round this table—I ask this question only because my people will ask and because the Security Conncil does not represent only these eleven countries but, as we understand it, all the Member States of the United Nations—about this apparent, gross, obvious, continuous, persistent and flagrant violation of the cease-fire agreement, of international law, of commitments contained in Security Council resolutions and Commission resolutions, and solemn understandings given by representatives of Member States to our Government, which are in writing and which have been made public ?

The shoe is on the other foot. That is to say, the annexation is on the other side. The Security Council would be justified in asking us why we have not requested a meeting in order to complain about this annexation. The answer is twofold. My Government proceeds on the basis that this problem —and that is what it is; it is not a dispute—is one of extreme complexity, which involves India-Pakistan relations and various other world factors. The solution of it, which was supposed to be proximate on 1 January 1949, is still far from being at hand. We consider that we have a duty not to re-agitate matters and therefore we have let sleeping dogs lie so far as the actual stage of affairs is concerned, without in any way permitting the Security Council or anyone else to obtain our assent—and it is repeated so many times –to any change or alteration in the status of this territory.

The representative of Colombia has referred to these matters [J68th meeting]. He probably has a first-hand knowledge of the question, because some of these assurances were given by Mr. Lozano. The Secretary-Geneal has an easy way of ascertaining the facts in this connexion, because some of the members of the Commission's staff at that time are still members of the Secretariat here. These assurances are not hanging in the air; they are part of the resolutions. I deal with them more specifically today in view of the observations of the representative of Colombia,

To place demilitarization in the centre of the present draft resolution is, in our opinion, a misreading

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of the entire situation. It is this aspect which has bedevilled the question since the time of General McNaughton. It is a matter of great regret to us that suggestions made, in a spirit of good will, by two persons from countries which are members of our Commonwealth should have been ultra vires of every decision and of the principles of the Security Council. Sir Owen Dixon is a distinguished judge; he is now Chief Justice of Australia. With great respect, I must say that Sir Owen Dixon seems to have approached this problem as though Kashmir were the Australian bush of 200 years ago—and, if Mr. Walker objects to that idiom, if it is one, I shall withdraw it—as though Kashmir belonged to no one and, therefore, a United Nations government or some other government could be set up in gross violation of the Security Council's express commitment.

My Government is entitled to ask this question : why is it when we have committed no violations whatsoever, that there is all this talk about violations by us? The Security Council itself—a party to this agreement—is remiss in not drawing the other party's attention to violations; the Security Council is remiss in not asking for the withdrawal of the other party from that area; the Security Council's representatives make proposals to us which are in gross violation of the commitments. Why is there no unanimity about these violations?

In fact, we would not have discussed the 13 August 1948 resolution if there had been any suggestion that the sovereignty of the Jammu and Kashmir Government and India's competence as regards the defence of its frontiers—which are on the western and nothern side of Kashmir—were in question.

I do not know whether the Security Council wishes me to go on citing these documents. The documents are before the Council, as I have said time and time again.

Mr. Korbel, the Czechoslovak representative, who was Chairman of the Commission in August 1948, said that the sovereignty of the territory was not to be changed. In a letter

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which the Prime Minister of India sent to Mr. Korbel on 20 August 1948, the Prime Minister wrote :

> "If I understood you (Mr. Korbel) correctly, A, 3 of part II of the resolution does not envisage the creation of any of the conditions to which we have objected in paragraph 3 (I) of this letter. In fact, you made it clear that the Commission was not competent to recognize the sovereignty of any authority over the evacuated areas other than that of the Jammu and Kashmir Government." [S/1100, para. 71].

Now, there was only one Jammu and Kashmir Government then, and there is only one Jammu and Kashmir Government now. I ask the representative of Cuba, who is so attached to the idea of sovereignty and freedom from intervention in internal affairs, how he reconciles that position with this one in respect of Kashmir.

In reply to the above-mentioned letter, Mr. Korbel wrote to the Prime Minister of India as follows :

> "The Commission requests me to convey to Your Excellency its view that the interpretation of the resolution as expressed in paragraph 4 of your letter coincides with its own interpretation. [*Ibid.*, para. 79.]

In a letter dated 16 April 1949, the Vice-Chairman of the Commission, who, I believe, was a United States citizen, wrote :

> "It has consistently been the view of the Commission, as well as the Security Council, that pending the determination of the will of the people as regards the accession of the State of India or Pakistan neither body"—aand this means neither the Security Council nor the Comission, not India or Pakistan—"will recognize any new sovereignty in the State. To do so would constitute a prejudgement of the will of the people."

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I read out all these documents because they have a relation to the draft resolution sponsored by the United State and the United Kingdom. They have a resolution to the violation of our municipal law and the principles of the law of those two countries—and this particularly concerns the represintative of the United Kingdom, for it is from the United Kingdom that we claim the heritage of this law. What is more, they have a relation to the violation of international law—and I shall return to this aspect in a moment.

I should like now to read out the following excerpt from the Commission's third interim report :

> "The territory evacuated by the Pakistan troops will be administered by the local authorities"—and the expression "local authorities" is intended to mean persons who are not a government, who are operating in the area de facto—"under the surveillance of the Commission and without prejudice to the sovereignty of the State."

Hence, there can be neither a Pa' istan nor an "Azad" nor a "Gilgit" government, nor any other government, in this area. The other day. I read out to the Council the Commission's agreement that we were entitled to station garrisons there for the protection of the trade routes from the north and the northwest (763rd meeting, para.62).

I continue to quote from the Commission's third interim report :

> "These provisions are without prejudice to the territorial integrity"—and, when part of the country has been annexed, that is certainly a violation of territoaial integrity—"and the sovereignty of the State of Jammn and Kashmir."

I could go on quoting from these documents—and there are so many of them.

In the Security Council, General McNaughton—who, I believe, was President of the Council at the time of which I am

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speaking—approached this problem as though this territory really did not belong to anyone, as though two parties were fighting over it; he tried to place us both on an equal status. Sir Benegal Rau, who was then a member of the Security Council, wrote the following to General Mc Naughton in this : connescion.

> "It has been admitted all along that the sovereignty of the Jammu and Kashmir State should be accepted over the whole area of the State."—that is a statement of our position—. "If Pakistan irregular forces, such as the Gilgit or the Baltistan Scouts, remain in the northern area, the sovereignty of the State will be violated militarlly".—This, again, is a point which has an immediate bearing on the suggestion made by the United States and the United Kingdom.—"Further, if, as suggested, the administration of this area is to remain the hand of the existing local authorities, which have been created by Pakistan and are aided by Pakistan officiels, the sovereignty of the Jammu and Kashmir State in this area will be equally violated in the administrative field."

That was said in reply to General McNaughton's suggestion for the creation of a new situation, disregarding the basis of the procedures :

Members of the Council will thus be able to understand why the Government of India has to be extremely wary. A suggestion is put to us, and we are told: "No, you are not asked to accept it, you are only asked to look at it". But the next day we shall be told, "You looked at it, and did not think it was a profanity to do so; if it is not profane, then it must be sacred, and therefore it is binding on you". That is the kind of argument that we have heard.

Sir Benegal Kau also said the following with regard to to the question of sovereignty, on 7 February 1950 :

> "...accession does not mean dissolution : the acceding State remains intact and fully sovereign in its own field

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even after accession; it continues as a single unit. If, therefore, the plebiscite is to be held for the State as a whole, it must not be disrupted beforehand." [463rd meeting, p. 12].

I turn now to a memorandum which the representative of India transmitted to the United Nations Representative, Mr. Graham, on 11 September 1952. I allude to this later period in order to show that this is not old history. In that memorandum, the representative of India said that the Government's position was the following :

"The administration of this area would, under paragraph 3 of part II of the resolution of 13 August 1948, vest in local authorities to be established or recognized for the purpose; to these local authorities, under the same resolution, only local administrative functions have been assigned···To give them any armed force equivalent to troops would not be consistent either with their status or with their functson and would be a violation of the soverignty of the Union of India and the Jammu and Kashmir State. In the every nature of things, therefore, these local authorities can be entrusted only with a civil armed force." [S/2783 and Corr. 1, annex 5, sect. 1].

In a letter to Mr. Graham dated 17 February 1953, we stated :

"The Government of India are unable to agree to the retention of any military force in the socalled 'Azad' Kashmir territory. Not only would this be contrary to the assurance given by UNCIP to India"—and I contend that every assurance given by the United Nations commission for India and Pakistan to India is an assurance given by Security Council to the Government of India—"that the resolution of 13 August should not be interpreted, or applied in practice, so as to bring into question the sovereignty of the Jammu and Kashmir Government over the portion of their territory evacuated by Pakistan troops..." [S/2967, annex IV, paaa. 2].

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Of caurse, the evacuation never took place.

That is the position with regard to sovereignty.

The observation that I shall now make has relation to the whole conception which is now sponsored by the United States and the United Kingdom in regard to United Natians forces. There are also other matters connected with it. My distinguished friend, Mr. Lodge, United States Ambassador, has told us at the 768th meeting that we are only being askcd by the Security Council to consider this idea of United Nations forces, but it is not right to ask a sovereign Government to consider something that is against international law, against its own sovsreign rights, and in violation of the agreement with the Security Council. It is unethical, inequitable and, what is more, it would not lead to a settlement. I am afraid that Mr. Lodge made a slip when, in explaining the draft resolution, he used the words "specifically the United Nations force", so that it was not just one of those things that are innocent. He said that the core of this draft resolution was the Unitcd Nations force and, Mr. Lodge being a man of, if I may say so with great respect great simplicity of mind and frankness and candour of expression, let this out. No doubt his speech had been very carefully looked into and the words had been put there. Since in a year from now these words may be quoted against us, I do not want to make any mistake of my not having something to show to you about that.

The United States representative has addressed a request to the Government of India to receive the President of the Security Council very cordially. We appreciate this request and accept it in the spirit in which it is made, but, as I said a while ago, so far as hospitality is concerned the present President is almost half a native of India. I do not mean this in a disrespectful way; you are always welcome.

In the statement of the representative of the United States—perhaps I might make this general—there is no reference whatsoever to the people on the other side. My colleague

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from Cuba has spoken about rights, about self-determination, about the people and about all those things that we value [768th meeting, paras. 87 to 90], but why is it we have not heard the voice of Cuba in connexion with the freedom of the people who are under the suppression and tyranny of Pakistan authorities on the other side of our cease-fire line? Why is it that we have not heard that in ten years these people have not seen a ballot paper? Why is it that they are streaming into our part of the territory? Why is it they are under conditions of economic degradation? Why is it that when the five-year plan is making vast strides in the State of Jammu and Kashmir, there is no such thing at all, or even a semblance of it, anywhere in the Pakistan-occupied area? Why is it there are still wild tracts? What is more, why is it that the very men who are the accredited representatives of the organizations of this area make representations to the Pakistan Constituent Assembly and say: "We are but helots, we are but slaves, we have no voice in our own country"? With what voice can either the Security Council, or anyone coming before it, demand a plebiscite for people on our side who exercise their franchise, who have freedom of speech, who function under scores of local bodies, who have freedom of discussion, who have newspapers, who have economic development? With what voice, with what strength of argument can Pakistan come before the Security Council and ask about freedom of choice for those people who have no freedom at all? We say that part I of the resolution of 13 August 1948 stands violated and therefore, Pakistan should have no say at all. It is my bounden duty to request the Security Council—not, my friend from the Phillippines, to admonish—to give me an answer to these questions.

Our people are dedicated to the Charter. Their emotional reactions, as the Secretary-General will bear witness—I am not making him a party to our dispute—are dedicated to the Charter. They feel that here everything works in terms of justice, equity and fair play. How is it that in all these nine years of discussion no one has asked these questions? All the argument has been about the people who have rights, asking us—and that is putting it at its best—why do they not have

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more. In other words, if there were a plebiscite when the conditions are satisfied, when it will not create an upset, and when the security of India is not in danger, if we are, by the lack of the conditions that are necessary for a fair settlement, put into the position of handing these unfortunate men who have exercised their freedom into the helotry that prevails on the other side, then it would be a sin against the United Nations Charter.

My colleague from Australia later reminded us of very valid examples, as he described them, and very salutary examples. He said that we had recently had a case where we sent out a united Nations force [768th meeting, para. 53]. It is my recollection, although I may be wrong, that the representative of Australia did not support that proposition at the time, but that is by the way. It is misleading and it is unfair to us, at any rate, whatever you may think of it yourself, to draw an analogy between the United Nations Emergency Force in which we participate and which is in Egypt and any suggestion of the kind that is now being made. In one case, the territory of Egypt was invaded by France, the United Kingdom and Israel, and there was no question of having to find out about the invasion. Nobody ever denied that it was an invasion, and the purposes of this Force were twofold, and my Government has insisted that these purposes should remain twofold. The purposes of this Force are described in paragraph 12 of the rort of the Secretary-General on the plan for an emergency international United Nations force. In that paragraph it is stated that the functions of the Force are to supervise the cease fire and to supervise the withdrawal. Is anybody suggesting that a United Nations force should go into the Pakistan-occupied areas in order to supervise their misdoings or to stop their misdoings and to supervise their withdrawal, and then to go away? That is not the idea at all. Therefore, it is not possible to draw an analogy between the two cases. In one case, the United Nations Emergency Force had to go to the defence of those who were aggressed against, and in the other case it would go to stand by the aggressor. As Sir Pierson Dixon, with the candour we expect of him, has pointed out, that is what Pakistan has asked for and that has been espoused. Any

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attempt to draw this parallel is, in my humble submission, a challenge to the political intelligence of the Member States of the United Nations, because the analogy bears no relation to facts whatsoever. As the film writers would say, such resemblances as there may be are purely coincidental. Therefore, do not let us draw this analogy, which comes ill from the representative of Australia, who initially refused to have anything to do with this business of sending a force to Egypt in order to implement the purposes of the Charter. I will come back to this and say where we stand with regard to the Charter.

We agree in the main with what has been said by the representative of Colombia, who had the advantage of having one of his countrymen on the Commission who spent hours and hours with the Heads of Government and high officials both in Pakistan and in India.

We have circulated documents for your information, and we hope that you have read them. We hope that if you have not yet read them, you will read them in the future. If I may say so with respect, I would not feel any sense of umbrage if peoole did not read them fully, because I myself find it difficult to get from one end of these documents to the other, but a reading of them is necessary.

The representative of Cuba started from a basic problem that was worthy of the great philosopher, Jean-Jacques Rousseau, about the sovereign will of the people. He then went into history and, if I may say so, he misunderstood what I said in the Security Council, but that may have been my fault. I said that the capital of Kashmir, Srinagar, was founded 2,300 years ago. I did not say at that time that through the millennia this was a separate State. Actually, the history of Kashmir goes back 5,000 years before the Christian era. It comes into mere modern history, in the Buddhistic period. After a short period of Buddhist rule, a succession of Hindu dynasties ruled in Kashmir until the end of the twelfth century. Then it came under Moslem rule and was subsequently reconquered by a Moslem emperor, Akbar, of India, and became part of the Indian Empire. For sixty-three years, on account of the row

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with the English, the Afghans then occupied it. There were difficulties between the Afghans and the British at various times but not now—they are very good friends, and we are happy they are. There are only few episodes in the long history of Kashmir when it had been outside of the mainland of India. My colleague from Pakistan the other day refuted the "purchase" of Kashmir and I gave the answer to it.

The argument of the representative of Cuba is that the accession by the King is not acceptable. With great respect to his legal knowledge, which is very considerable so far as I am concerned—I mean the respect—no other accession would have been valid, and I call as witness rhe representative of the United Kingdom or his legal experts. Even if the four and a half million people in Kashmir had signed a memorandum saying: "We accede", on that day in 1947, that accession would not be worth the paper it was written on. It might have political value. It has political value and it has social value. The British Parliament laid down that the accession was to be by the King. This does not mean that we could trick a King into giving an accession against the will of the people. If that is the argument that is in the mind of the representative of Cuba, then I think it is a valid argument and I humbly refer him to the answer I made to the Pakistan Foreign Minister in regard to the allegation of fraud. Therefore, there is no question that, over and above that, the first thing we did was to seek, and in the end obtain, the consent of the only national movement there was which for twenty-five years has resisted the Maharaja's rule and the members of the national movement agreed and they head the government today. We agree with the representative of Cuba that we must honour commitments, but we equally submit that the Security Council has an obligation to honour commitments, and commitments are what are in the documents and what is in the spirit of those documents in all the surrounding circumstances.

That takes me to the question of the plebiscite which has been referred to constantly. It appears to me to be comparatively simple. The resolution of 13 August 1948 was adopted by the Commission at its 40th meeting. I want to submit to

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you as responsible members representing Member States that just because a word appears in a document or a resolution and it is repeated a million times over, it does not add to its legal, political, moral or other values. It is quite true that we have talked about the plebiscite, but what is the place of it in this document? I have read this many times, but I will read it again. Part III of the resolution reads :

> "The Government of India and the Government of Pakistan reaffirm their wish"—not their resolve, not their commitment, but their wish—"that future status of the State of Jammu and Kashmir shall be determined in accordance with the will of the people and to that end, upon, acceptance of the truce agreement"—here my colleague from the Philippines comes in—"upon acceptance of the truce agreement, both Governments agree". Agree to what? They agree "to enter into consultations with the Commission to determine fair and equitable conditions..." [S/1100, para, 75].

We did not say that when a plebiscite has been organized we would enter into consultation after it was over. Perhaps it was our mistake that we entered into consulation before because we thought we were going very, very fast. It may be a lesson for the future, but I submit it is not a reason for misunderstanding the position of my Government in regard to international commitments. We agreed "upon acceptance of the truce agreement...to enter into consultations with the Commission". What for? To determine "fair and equitable conditions". Now how about this propaganda which has been going on for the last seven or eight years and which shows no sign of abatement and, what is more—it is not only aided and abetted—which is inspired by responsible leaders and members of the Government of Pakistan, which is part of their national policy. In those circumstances, I submit to you that we had to create the conditions, that is, the first conditions necessary.

A plebiscite is a peaceful process, and you cannot force

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this peaceful process. It is like some people using the machinery of democracy in order to destroy it. So, similarly, the word "plebiscite" embodies the great idea of self-determination and it simply is not to be misinterpreted. We stand by part III of the resolution. Two parts have not been satisfied. Our undertaking is to confer in order to find "fair and equitable conditions". Are conditions equitable when there is a compaign of hatred ? Are conditions equitable when the treaty is in the place of an annex ? Are conditions equitable when the Pakistan Government both privately and openly says the purpose of its military programme with the United States is in order to arm against India ? If I am challenged on this, I will produce the evidence. That is with regard to the plebiscite, so I say with great respect to my friend from Cuba that we are not running away from any conception. But I submit that it is wrong, that it is against international law, that it is against the commitments of the United Nations, that it is against any possibility of the Charter's being respected and that it is a violation of the dignity and work of those people who believe in the United Nations, to say that just because these words appear somewhere that that is therefore a contract. That would be like my colleague the other day who accused some little Moslem boy of quoting the Koran only in one part. Therefore, that is the position of the plebiscite.

I have been asked why we take up one position in regard to Algeria and another in regard to Kashmir. First of all, in regard to Kashmir, the conditions have been laid down here, a whole plan has been laid down here. We agreed to the principles. By the way, Sir Pierson Dixon also referred to the resolution of 5 January 1949, I should like to refresh his memory. It refers to the principles on which a plebiscite has to be carried out—it parts I and II of the resolution of 13 August operate. After part I and part II, then part III begins to function by negotiation. When that is all ready, then there is a plan on the chessbord. You cannot start from the other end. That is how things are.

With regard to Algeria there has been a conquest, and

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that is not denied by anybody. I do not want to go outside the realm of this discussion, but I did not raise this question. There was a conquest and there was a national movement to replace that conquest. There is no such thing in Kashmir. I told you the other day that the best evidence and the most convincing argument before the Security Council, irrespective of all legal doctrine, would have been if the marauders that came into Kashmir, and later the Pakistan Army, had been welcomed as liberators by the people. They were not. They committed rapine and plunder and there was no question of religion because the Christians and Moslems were equally sufferers. They were not welcomed as liberators by the local populations. So when the representative of Iraq refers to the great brotherhood, he must take this into account, We are also part of a greater brotherhood, namely, the human brotherhood, and therefore it is not as though the two things were on a par. There may be a great deal of argument in favour of not implementing self-determination in Algeria or implementing it. That is another matter. But the two things are not on all fours.

In regard to the statement of the representative of Cuba there is one other matter which I want to dispose of, and that is the reference to my Prime Minister. I have, both for reasons of propriety and political reasons, the obligation to put everybody right on this matter.

There were two suggestions, one of which I answered at a previous meeting [767th meeting, para. 88], apparently without carrying conviction. One was a telegram sent by the Prime Minister early in October 1947 to Mr. Liaquat Ali Khan, of whom he was an intimate friend, suggesting that the two countries together should come before the Security Council and that the matter should be settled by plebiscite, by the United Nations and so on. This was long before there was any proof that the Pakistan Army was invading. That was at the time when Pakistan was denying that there was complicity on its part. That was at the time when we had just parted company; and I pointed out that, so far as the political and the documentary parts of the problem were concerned, what-

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ever might have been the commitments, if they had been accepted, they would be binding; if they were not accepted, they were not even escrows; they had lapsed and, therefore, we started from the Security Council because the letter of 22 December 1947 from my Prime Minister to Mr. Liaquat Ali Khan said that nothing had happened and proposed to take our remedy under the Charter of the United Nations. And we came here and said; "We are invaded. In order to protect ourselves we may have to invade Pakistan. We do not want to do so; therefore, please stop them frdm doing that."

The second declaration is the one to which the representative of Cuba has kindly given authority. It comes from an organ called "United Project" which is not run by the Indian Government and we have no responsibility for its policy. It was a massage that came on 6 February 1957 from Allahabad in which, according to tho report. Mr. Nehru listed the following conditions for agreeing to the plebiscite; withdrawal of Pakistan troops from "Occupied Kashmir" the "legal Government" of Kashmir must take over the entire State. I believe that this massage came to the United Nations between four and five o'clock. Between five and six o'clock, thanks to the reputable agency Reuter's, we get another version of it, which was published all over the world, and which we have not contradicted, and this was what he Prime Minister said; We have been charged in certain quarters"—that is, over here—"with having backed out of our commitment to hold a plebiscite in Kashmir. I would like to draw the attention of those who are making this charge against us to the prerequisite condition of the plebiscite. The condition was that Pakistan would withdraw its forces from that part of Kashmir which it occupies. Has Pakistan fulfilled that condition?" Mr. Nehru said: "A grave injustice has been done to India in regard to Kashmir. The basic point that Pakistan committed aggression in Kashmir has been ignored altogether." And the representatives around this table have done it this morning. The Prime Minister said: "Kashmir has made tremendous progress in the last nine years add no steps should be taken which would disturb the peace of that State." Outside of all controversy. I ask the Council

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to believe that that is our overwhelming concern about the re-agitation of a situation which can lead to civil war all the way round and conflicts of a character which I shall describe in a moment.

In view of the time, I shall try to make the remainder of the observations very brief.

Mr. Romulo said that I had "admonished" the Security Council [768th meeting, para. 107]. Normally speaking, I would let this pass, but it is not something which I wish to leave on the record, coming from the distinguished personality who occupied the Chair at that time. I believe this rises from that fact that he was listening to a very long speech, and like everybody else, sometimes he gets tried of it. What did I say? I said that our basic position was aggression. Our basic position is the complaint that we brought forth here on 1 January 1948. From that, we have never moved. From that, we did not move when we came here in those days, not with General McNaughton, not with Sir Owen Dixon, not with Mr. Graham, not with you, not with anybody in the world. That position we have never moved from. But I went on to say that, at the same time, representatives of States members of the Security Council, calling me before them, could not just regard themselves as Rip Van Winkles, as though nothing had happened here in nine years. In spite of that basic position, I have the responsibility to address myself to the draft resolution before the Council. That puts a totally different complexion upon my admonition. Do I look like the kind of person who would admonish this august body? I leave it to the Council to judge.

We have great confidence, in spite of the present attitude of the Security Council, that when these facts become more and more known—and that is why we keep on bringing the Council's attention to them—representatives will begin to have doubts in that matter.

Now we come to the draft resolution before the Council [S/3787]. There were two suggestions made by the President in his capacity as representative of Sweden. I have not referred to the observations made by the representative of Iraq except

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to say that the presentation he has made does not represent the facts of the situation. It ignores the circumstances but, at the same time, I pay tribute and express my appreciation of his desire to be kindly on the side on which he is not neutral; and that is all I can say. One must stick to the truth even when one wants to polite. The representative of Sweden, who is the President, speaking here said :

> "As we see it, there are; in principle, two courses open to us along which progrers may be made towards the ultimate goal which, it seems to us, must be an agreement between the parties on a political basis..." [Para. 39 above.]

This is a matter which I shall have to deal with when I come to the basic position of the Security Council under the terms of the Charter, and particularly Chapter VI. There is no settlement in this matter that is possible except by agreement between the parties; and, so far as my Government is concerned, we have done everything we can, up till now—but I said "up till now": we have not written the end of history. We have made a solemn declaration, and we repeat it, that we shall at no time, on any issue, however much it may be against us, refuse to negotiate, refuse to seek conciliation, but we cannot be called upon to surrender our sovereignty beforehand; and we cannot be called upon by the Security Council to forgo the charge of aggression upon our sovereignty. We cannot be called upon to ignore a complaint which we have submitted in terms of the provisions of the Charter.

Mr. Romulo said—as was said by someone else the other day—that there were counter-charges (768th meeting, para. 104). I submit that there were no counter-charges on Kashmir. There may have been counter-charges on other matters. The Security Council decided not to discuss them for the present, but if it should be decided to discuss them, we would be willing to answer. In regard to Kashmir, so far as I can recollect, it is only paragraph 3 of the document submitted by Pakistan [S/1100, annex 6 document I] that is relevant, and the answer

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was a denial. It was not even what the lawyers call a traversing of the facts; it was a denial, saying that we had not invaded. That denial was denied afterwards by the Commission, and, therefore, what remains is invasion, and aggression.

When General McNaughton was President of the Council and when Mr. Graham and earlier when members of the Commission, whom we did not invite—in fact we did not invite the Commission, but we said, ours is a hospitable country : you can come—came and talked and talked—and in our part of the world it is very rude not to answer people's questions—and asked questions, we answered them. But we also asked some questions ourselve. So, would it have been right for us to come before General McNaughton and to say; no, we will not talk until you decide this question of aggression ? This very Council, with great legitimacy—I may say, with total legitimacy—would have told us that we were being unreasonable. But what could we do ? We reserved our position in every document, in every utterance. We reserve our position today; and, by reserve, we mean, do not put it on the shelf.

In other words, if the position put forward by General Romulo and, the other day, by Mr, Tsiang is to be accepted, it becomes a crime to negotiate, because once a charge of aggression is decided, what is there left to negotiate ? We are prepared to negotiate without prejudice to that, and that is what the Commission said all along. Therefore, Mr. President, it is in your hands; it is your responsibility to address yourself to this position.

It is easy for me to be dismissed, as one person; you cannot however dismiss the 400 million people in our country when a question of this kind comes before them. This is a problem which has deeply agitated our people, and it is only the strength of our leadership, which is based in the masses, which is based in trust and confidence, that has been able to restrain the kind of excitment which might lead to a hatred which could not be controlled afterwards. It is only that which has prevented them from developing the wrong kind of feeling in regard to certain other countries, which has prevented them

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from getting into a kind of war fever. The second course suggested, therefore, so far as that is concerned, is one by which as a general principle or as a universal premise my country always stands—indeed, I submit all countries stand committed by it—under the Articles of the Charter.

There are underlying problems of a legal character. Because I have tried to be precise in regard to the position, because if the accession is complete and legal all these problems become comparatively simple. I have never asked the Security Council to pronounce on these legal issues since from the very beginning our position has been that we cannot ask the Council to do so because it is not a court of law. At the same time, the Council is working in the context of international law and justice and cannot depart from that, and that is why I have pointed it out to you.

The President, speaking as representative of Sweden, has thrown out the suggestion that it might be useful to have certain underlying problems of a legal character progressively clarified in order to create better conditions for an agreement. I suppose the real meaning is that a look should be taken at the legal claims which we make and which are basic to our position. If it means nothtng more, in terms of any provisions of the Charter, I believe the President will agree that I am justified in saying that he would want to see this in greater clarity and would want it to have full consideration by our Government and with our legal advisers—indeed, the United Nations would want to do that—for we cannot at any time turn our face against the law. That is our position, whatever the consequences are; that is our position in regard to these suggestions and there it is.

The President went on to say that some legal aspects of the matter might perhaps be referred to the International Court of Justice for an advisory opinion. However, it all depends upon what questions are referred to the Court; we ought to have the opportunity to consider them in order to see whether the problem is referred to the Court in its necessary ambit and scope. Therefore, so far as the Government of

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India is concerned at the present moment, we simply say that we do not reject any of these ideas, because if we did we should be doing wrong. You would fall foul of us, and even apart from that we should ourselves feel uneasy in our minds. We are therefore prepared to give consideration to these matters, and indeed the Governmen t of India knows the views of the Swedish Government and is prepared to take them into consideratian, but we cannot go into any deep consideration of policy until the general elections are over.

That deals with the statements. Now I come to the draft resolution [S/3787] and I will not take very long over it.

The first paragraph of the preamble recalls previous resolutions. It is one of those habits that we have formed, to recall resolutions, but I would like the draftsmen who assist the representatives of the United States and the United Kingdom to have a look at these resolutions. Some of them you can recall as a matter of historical interest, but you cannot implement them. For instance, one of them says that the Commission ought to go to India and Pakistan or something like that; so it is not possible of implementation. This is probably a very obvious intance but there are parts of these resolutions that have been worn out by time.

Therefore, when the representative of the Philippines made a criticism of my Prime Minister's statement—he did not say so, but he implied it—I want to say that we stand by that statement. I had a copy of the first draft of this resolution half an hour after I started speak and the only alteration which was made in it was to the advantage of Pakistan. Secondly, when I finished speaking that evening I said to the President, who was the representative of the Philippines, that I had then made that part of my statement in order that he need not feel perturbed that some D-Day, some zero hour was approaching not that I had finished the argument. In fact, I stated expressly that I had still to argue the case. What is more, those who know the facts of this matter know very well that what my Prime Minister says represents the truth.

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Therefore, recalling these resolutions is merely an exercise, the sort of thing that often happens; and my delegation and my Government would find it difficult to understand why the resolution of 24 January 1957 [S/3779] has greater significance than the resolution of 17 Jannary 1948, and I would be glad if the representative of the United Kingdom would tell me. If the Council would insist upon adherence to the resolution of 17 January 1948, we could forget all these other resolutions and I think we would have made a beginning in solving this problem.

On 17 January 1948, the Council asked both parties not to aggravate the situation, not to introduce war material and things of that character. That stands violated. This is what was said :

"*The Security Council,*

"*Having heard* statements"—and may I remind the representative of the United Kingdom that in those days they said : "having heard statements"—"on the situation in Kashmir from the representatives of the Governments of India and Pakistan,

"*Recognizing* the urgency of the situation"—and then comes the operative part :

"*Calls upon* both the Government of India and the Government of Pakistan to take immediately all measures within their power···calculated to improve the situation," —and "Jehad" is not an instrument of improving the situation : and the calumny and the base words uttered about my Prime Minister and the head of my Government and of my country and of our traditions that is going on in West Pakistan at the moment is something not in consonance with this—"and to refrain from making any statements and from doing or causing to be done or permitting any acts which might aggravate the situation;

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"*And further requests* each of those Governments to inform the Council immediately"—I want to repeat this, if I can have the attention of the Council for one moment—"of any material change in the situation which occurs or appears to either of them to be about to occur while the matter is under the consideration of the Council..."

The matter has been under the consideration of the Council from that time until now and Pakistan did not inform the Cauncil that it had introduced troops. I say it acted behind the Security Council's back and concealed facts from the Security Council and I think all our sins would be washed out in the face of that. And I ask my colleague Sir Pierson Dixon why the resolution of 17 January 1948 has less sanctity than any other resolutions. Insofar as they are recalled, and if they have any meaning, that is a helpful situation. I say that if the resolution of 17 January 1948 was adhered to by Pakistan, then we would have had the beginning of a solution.

May I preface my next observation by saying that I recognize that I have no part in the draft resolution before the Council [S/3787] either by saying that I support it or that I oppose it because I am not a member of the Security Council, but I believe that I am invited to offer observations.

The second paragraph of the preamble reads :

"*Having taking into consideration* the statements of the representatives of the Governments of India and Pakistan".

With great respect I would submit that this is a slight overstatement because, although the statements have been heard, the case is so complex and has been argued at such great length, and there are so many documents on the matter and so mnny cross currents in it, it would be more accurate to say "having heard what we have to say", this would be nearer the truth and more nearly in

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conformity with previous resolutions. This gives the impression of a great deal of deliberation on this matter before coming to the next conclusion and I submit that I believe that we would like member Governments, not just one individual in the Security Council, but member Governments, to go into this situation, which is one of the most important situations in the world.

The draft resolution continues :

"*Concerned* at the lack of progress in settling the dispute".

This word "dispute" was introduced by the Security Council without our assent. The only two resolutions to which we agree are those of 17 January 1948 and 20 January 1948 and the two resolutions of the Commission. You will find that in these resolutions the word "dispute" does not occur. The word is "situation" —and it is not quibbling with words—we have head the legal arguments—and law is the essence of civilized language, so we cannot just ignore it—but we definitely think that the introduction of the word "dispute" means a political change.

Sir Gopalaswami Ayyangar, speaking before this Council, said in categorical terms that this is not a dispute over territory—there is no dispute over our territory; the territory is a Constituent State of the Uuion of India. In the exercise of its sovereignty, for any political reason, it can consent, it can initiate, it can order an act of cession. That is a different question. Therefore, there is no dispute over territory. I submit this frequent reintroduction of the word "dispute" is an attemst on the part of the framers of these resolutions to weight these things against us—because this is a "situation", it is not a territorial dispute. How can it be a territorial dispute when the soveseignty of Jammu and Kashmir was recognized by the Security Council when you

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say neither the Security Council nor the Commission can change it, when you say that it is the duty of the Union of India to look after the security of this territory? It can station garrisons on the western and north-western frontiers to guard the passes that come into India.

I read the next paragraph :

"*Considering* the importance which it has attached to the demilitarization of the State of Jammu and Kashmir..."

I submit the word "demilitatization" has a particular connotation. It is not only just a plain smite. It means much more. And if you will use the word "demilitarization" in the context where a party who has no legal, no moral, nor any other title under any semblance of law, is in occupation of the part of a territory, to speak about demilitarization in regard to that area, is a mockery of justice and of international law. And so far as we are concerned, what the Security Council is doing is to expose our vast territory to the insecurity of a neighbour who is not showing from the west the friendly intentions that we expect. Therefore "demilitarization" in terms of counting, in quantum of troops and whether they shoot pistols; or revolvers, or shotguns or machine guns, those problems are not the important problems.

The first element in demilitarization is the removal of those people who have no business and no title to be present on the soil of Jammu and Kashmir. That is in the 13 August 1948 resolution, that is in the 5 January 1949 resolution, that is in every resolution of the Council. And what is more, that is in every assurance given by Mr. Korbel, given by Mr. Lozano and given by Mr. Huddle—the United States representative who was also Chairman—that irrespective of personalities, those were the assurances given to us, not in secret, not whispered into our ears, but they are part of the public documents which are in the records of the Security Council. If for any reason the Council on a subsequent date gave an assurance or the Pakistan side, which they can interpret in another way, the

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responsibility does not lie on the heads of the Government of India. Therefore, we would object to this word if we were parties to the resolution. We insist, because this is throwing the whole thing out of its context; that is to say, you are asking the President of the Security Council to do what Mr. Graham has been trying to do for five years, what Sir Owen Dixon tried to do, and at the end said that this is not the problem, this is something else which he has not been asked to do—and so on. The whole reference—that clause—I submit is misconceived. It is the wrong context, the wrong thing. We are talking about something that has no real relation. I do not say it is irrelevant. The relevance of it is not essential. That is, there is no essentiality about this because that is not the problem.

The next paragraph reads :

"*Noting* that demilitarization preparatory to the holding of a free and impartial plebiscite under United Nations auspices has not been achieved."

Now there, I think it should also have been noted that one of the conditions of holding a free and impartial plebiscite is the cessation of religious propaganda. Under our law, which is copied from the British law, at least the essence of it, it is an unlawful practice (and some other legal phraseology, which I have forgotten) to appeal to religion, to say to voters that they are Catholics, therefore they ought to vote for the Catholic candidate; or that they are Protestants, therefore they ought to vote for the Protestant candidate; or that they are Moslems, that they ought to do this; or that they are Hindus and they ought to do that, or the wrath of God would be visited upon them. In any way, to make use of religion in order to obtain a political end in an election in our law is an unlawful practice which would disqualify the person concerned. The holding of a free and impartial plebiscite therefore is possible only when there is the preparatory condition,

Now, I submit to the two representatives who are res-

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ponsible for the initiating of this draft resolution, is it fair to ask for the adoption of a method, which in its general essence, which in its genesis, which in its purpose is peaceful, but enable it to be surrounded, if not rooted, in hatred ? Therefore, until that is cleared away, how can one get anywhere at all; and even with the passing of nine years, it has not been cleared away, and what is more, is being accumulated. I cite the evidence of the statement of the distinguished Foreign Minister who warned the Security Council, who professed in his first speech, in what in effect amounts to an ultimatum. And this campaign of "Jehad" that goes on—we are still in the days of the holy wars.

The next paragraph is the crucial part :

"*Noting* the proposal of the representative of Pakistan for the use of a temporary United Nations force in connexion with demilitarization."

It may be argued that it is right to note anything. There is no crime in stating that something has been said, But when in a resolution something is noted and something is not noted —for example, it has not been noted that the Government of India says that the country has been illegally occupied, that there is an enormous influx, accumulation of arms and forces, that there is hatred propaganda and all the other things I have told you, those things are equal, or even of greater value and they have not been noted.—So this selection, this invidious selection, lends a political importance to it. The Security Council, this august body which is seriously minded, notes something in relation to its value. Therefore a greater value is placed on this than on other things. It is this suggestion that has come out of "nothing the proposal of the representative of Pakistan". I submit that the proposals ought really to come from the Security Council. That, of course, is a matter for you gentlemen and not for me.

We come to the next paragraph.

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"*Believing* that, insofar as it might contribute towards the achievement of demilitarization as envisaged in the resolutions of the United Nations Commission for India and Pakistan and towards the pacific settlement of the dispute, the use of such a force would deserve consideration".

We should like to offer observations on three parts of this paragraph First we should like to comment on the words "might contribute towards the achievement of demilitarization". Facts deny this. How would a United Nations force contribute to the achievement of demiliterization when there are forty-five battalions of the "Azad" army on the other side and large numbers of irregulars and commandos who cannot be traced. What would be the practical size of any United Nations force that goes in there? Would a United Nations force in the conditions of the world at the present time be in a position to disarm any soldier of any other country? I can understand their performing police duties. I can understand their going into a place where we are sure they would not be fired at. But would you say that in the conditions that obtain in these areas any United Nations force that you can get to go would be able to achieve demilitarization? Would they be able to exercise the degree of supervision that was necessary? All this is on the basis that some agreement has been reached about it.

Furthermore, I would say that it is not necessary to have a United Nations force to achieve demilitarization. All that has to be done is for the Pakistan Army to withdraw and, in order to create conditions of security, for it to give an international guaranty that it will not move out of its cantonments beyond the spaces which can be permitted with security; and for the Indian Army in Kashmir, which is in a constituent part of its territory, to be deployed only in conditions of peace. That is what we have done. Therefore, the question of sending somebody to disarm does not arise.

With great respect I wish to say we have not in our country attuned our minds to the conception of any foreign

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forces. United Nations or otherwise, disarming our soldiers or disbanding them. That is a function of our sovereign Government. So far as we are concerned, if we gave an undertaking to withdraw them, as indeed we have done. We have, without any commitment, withdrawn very large numbers of troops from this area.

In this connexion, I would like to contradict what was said by the Foreign Minister of Pakistan the other day. It is a statement of the same character as I contradicted the other day, which he has not repeated afterwards, that the Government of India is concentrating troops on the Indo-Pakistan border. This is an entirely untrue statement, and I am authorized by my Government to deny it There has been no addition of military strength either on the Punjab frontier or any other Indo-Pakistan frontier. The Indian Army moves along according to the normal routine of its manoeuvres, of its practice. There has been no accumulation of forces anywhere, and no addition to their strength. This is, I believe, a story somebody picked up somewhere, which was printed in the newspapers and was believed.

The second idea in this is "demilitarization as envisaged in the resolutions of the United Nations Commission". With great respect to the authors of the draft resolution, I submit that this is a misstatement of fact. What is envisaged in the resolutions is the disbanding and disarming of "Azad" forces, the total withdrawal of the Pakistan Army and, at a subsequent stage when that is achieved, the withdrawal of the bulk of the Indian forces. It is quite true that we have discussed at various times a simultaneous synchronized operation. I submit, however, that as this has not been accepted, it ceases to have value. It cannot have. Hereafter, my Government will not agree to any commitment hanging over its head because we find that we have been the suffers in this. There is no room not to be on one's guard. Therefore, we submit that we have no commitments in this direction apart from what is in the resolution of 13 August 1948. Consequently, the second idea is not strictly accurate.

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The last part is the most important, it says "deserve consideration". I ask my colleague from the United Kingdom, who is a scholar of great repute, to explain to me what that means, apart from saying that this has merit. This is the Security Council which is composed of Member Governments of the United Nations, and they make a proposition which not only does not deserve consideration but which is contrary to the Charter, contrary to the interests of peace and contrary to the friendship that exists between my country and the United States on the one hand, and my country and the United Kingdom on the other. It is contrary to all the canons of international behaviour that must be respected. Therefore, it does not deserve consideration.

I say the proposal is contrary to the Charter because the United Nations has no authority to place any soldiers in our territory under Chapter VI, and I want to make this perfectly clear. In this connexion, when I say "our territory", any soldier that sets foot in the Pakistan area of the State of Jammu and Kashmir is violating the sovereignty of the Indian Union because, according to your decisions, according to the commitments we have with you, it is part of Jammu and Kashmir. So it is not as though you can make an arrangement with Pakistan and feel that you have not violated any law. It is a violation of Charter.

The other day the Secretary-General, in another connexion, pointed out that it was only under Chapter VII that troops could be placed anywhere, without consent. Now, sameone said that this consent should be forthcoming. I have no desire to sound unco-operative or even worse. The Government of India will in no circumstances permit foreign troops on its soil. That is a categorical statement I am asked by my Government to make to this Council. We will in no circumstances in this context permit the stationing of foreign troops on our soil. The only condition on which we shall have our troops go on foreign soil, as we told the Secretary-General publicly and privatly, or on which we shall accept foreign troops ourselves is in pursuance of the Charter.

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The Security Council is asking us, not deliberately, to accept a situation which in our view, is contrary to the provisions of the Charter, a violation of our sovereignty and calculated to disturb the peace. That is the legal part of it.

More than that, I would ask the representative of the United Kingdom, who has much more access to information about India than anyone else because of past connexions with us and many prerent connexions, to cogitate on the situation. What volume of troops would be required to keep order in the State of Jammu and Kashmir on both sides when our security troops are withdrawn, considering the vast amount of opposition there is even to the past resolutions of the Security Council, the enormous amount of public demonstrations of disapproval and public anger and the intensity of the feeling in the country with regard to this matter ? On our side, how many troops would be required by the United Nations, assuming there were no legal or other difficulties ? Equally, the moment this is published in Pakistan as a great victory for their side, there will be enormous hopes aroused and all these forces, about which I read to you—the man who asserts he will do it by force—will be altered. Therefore, any conception that this is deserving of consideration—I suggest that this is a chimerical proposition, an impractical proposition, a proposition that goes against the purposes of the Charter and the purposes of settlement.

There is a statement about the people of Kashmir—that is to say, the part that is not taken over by the enemy. This comes from an authority which will appeal to my colleague from Australia. It is a conservative paper which I believe has had very adverse comments on our policy. It is "The Sydney Morning Herald", and its correspondent Mr. Morrisby is now in Kashmir. This is what he wrote and said to the people on 11 February 1957, that is to say, a fortnight after 26 January. (This report is partly in direct narration and partly in indirect narration) :

> "The people of Kashmir have given their full support to the State's new Constitution, as this Constitution enshri-

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nes the sovereign will and has, therefore, special significance for all of them', said Edwin Morrisby of 'The Sydney Morning Herald' of Australia in Srinagar, 7 February 1957, in an informal meeting with the local newspapermen. Morrisby, who was giving his impressions of four days' tour of Kashmir, added that the State enjoyed semiautonomous status in the Indian Republic, and so the people enjoyed more freedom than in other states of India. The enthusiasm with which the people had rallied to the call for active participation in the implementation of development plans 'provide irrefutable evidence of the popularity of the Government and their leaders' he said."

Then there is another quotation from Mr. Morrisby :

"They have made it clear that they would under no circumstances tolerate any attempt to disturb the peace and stability of the State which has been achieved after great trials and sufferings', he added.

"Morrisby who went to some remotest corners of Kashmir Valley said : 'As I told you the other day, there are no restrictions on foreign travellers to Kashmir, apart from the fact that they must be able to pay their way'. He went on to say : 'There is nothing abnormal in the State. The people are quite contended and busy in their business of life, just like in the rest of India."

We did not ask Mr. Morrisby to write that. As we say this is not an Indian newspaperman. I usually do not quote newspapers, because, after all, they are not authoritative in this sense, but this is the latest opinion we have received from an independent source and it deserves consideration.

On this point about deserving consideration, I should like to request the representatives who are responsible for this draft resolution to address their minds to the history of this proposition. This is not a new suggestion. This suggestion

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was first made as early as 1948. If representatives will look at the transactions at that time, I would refer to the statements made by the Minister for Foreign Affairs of Pakistan, Sir Mohammed Zafrullah Khan, in a memorandum dated 19 August 1948 which was published in the first interim report of United Nations Commission for India and Pakistan. I shall read the relevant part :

> "In particular, the Pakistan Government would be glad to know whether the Commission intend to secure the services of an international or neutral force for this purpose and, if so, what the strength of such a force would be." [S/1100, annex, 26, appendix, para. 5].

So as far as Pakistan is concerned it is an old suggestion which has been reported time after time. The Commission's reply was this :

> "In drawing up the resolution of 13 August 1948, the Commission did not and could not proceed on the assumption that one or the other party would violate the truce. The implementation of the resolution presupposes good faith and co-operation between the two parties."— That fact is still true because without that we could not have any implementation.
>
> "As the Government of Pakistan is aware, the United Nations does not have at its disposal an international force. The use of a neutral force has not been contemplated by the Commission. However, the Government of Pakistan will have noted that the resolution provides for neutral military observers..." (Ibid., annex 27, appendix, para. 5).

The United Kingdom and the United States, if I may say so without any disrespect, are not original in this suggestion. They came out with this on 21 February 1951. The joint effort in relation to us is of long standing in this matter. In the United States and United Kingdom draft resolution of 21 February 1951, contained in document S/2017, this is said :

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"4. *Authorizes* the United Nations Representative to take into account in this discussions"—the same thing as now —"with the two Governments and in considering the arrangements for demilitarization and for the holding of the plebiscite :...

"(ii) The possibility"—it was less at that time—"that any forces required for the purpose"—at that time it did not say that it must be this one. It only said : "If you want someone: we shall send someone."—"of facilitating demilitarization and the holding of the plebiscite might be provided from Member States of the United Nations or raised locally." [S/2917].

I remember that the same suggestion was made by the Prime Minister of Australia in informal conversations. Our reply was made by Sir Benegal Rau, a man whose memory is revered and who cannot be accused of any overstatement of any sentiment :

"We are wholly unable to accept any entry of foreign troops in the State or in any other part of India."—that was in 1951, and we repeat that.—"In view of the provision made by the resolutions of August 1948 and January 1949, there is no occassion for the use of foreign troops or of special local levies recruited by outside agency. Nor, in view of the detalied provisions contained in the resolution of January 1949 to ensure a fair and impartial plebiscite, can we accept a supersession of the lawful government of the State or any interference with its normal functions." [533rd meeting, para. 40].

He was asked about it again a few meetings later, and Sir Benegal Rau's answer appears in the report of the 536th meeting held on 9 March 1951 :

"My friend has asked whether India agrees to the principle of having United Nations forces in Kashmir. I have already stated India's position in this matter and

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given our reasons for it : first, we are wholly unable to accept any entry of foreign troops in the State or in any other part of India; secondly, in view of the provison made by the resolutions of August 1948 and January 1949, there is on occasion for the use of foreign troops (...) [536th meeting, para. 26.]

Then something happened which I hope will happen this time also. On 21 March 1951 the United Kingdom and the United States dropped this suggestion in their revised resolution [S/2017/Rev. 1]. The same proposal was revived by Mr. Graham in India, and this was contained in his second report to the Security Council [S/2448], in paragraph 5 (c) of the questionnaire addressed to us. This was one of the questions :

"If not, is the Indian Government ready to accept forces to be provided by the United Nations in order to safeguard the security of and to maintain law and order in the whole State of Jammu and Kashmir as long as the United Nations, in consultation with the governments of India and Pakistan, seems necessary?" [S/2448, annex 3, p. 17.]

Our answer, given by the Prime Minister at that time, was this :

"As regards the suggestion for the bringing of United Nations forces into the States, it has been made clear more than once on behalf of the Government of India that the replacement of Indian security forces by foreign troops, howsover constituted, can under no circumstances be accepted. We do not understand why this suggestion is being repeated." [*Ibid.*, annex 9, para. 10.]

With very great respect, I repeat that last sentence of the Prime Minister : "We do not understand why this suggestion is being repeated".

Then I have a paragraph from my old friend, Sir Gladwyn Jebb's observation was rather nostalgic, in a way of

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-tting the troops back, but I do not share that view, and so I shall leave it.

On this draft resolution—and I ask Sir Pierson Dixon not to take this in the wrong way—our minds, not only mine but also those of people sitting around here, go back to those 300 years from Clive to Wellesley, from Wellesley to Dalhousie, from Dalhousie to Canning, from Canning to Minto—referring to the partition of India—from Minto to Linlithgrow. During all that period we have served to liberate our land from the presence of foreign feet on its soil with arms. The Security Council dare not ask us to accept the introduction of foreign troops on our sacred territory. Therefore, the history of our country being what it is, one of the conditions we have always asked was that there should be no foreign troops on our soil. If this bringsback these sentiments to us and even to those of us who are comparatively uninstructed—I say this perhaps with lack of modesty—what kind of sentiments will come back to the masses of our people? Therefore, any suggestion of this kind would be unwelcome in India.

I wish to add, before I leave that point, that the introduction of United Nations forces, which presumably would be constituted of volunteers of Member States, unless the United Nations proposes to form a foreign legion, would, in my submission, not only be a violation of the Charter; it would be a violation by each Member State that contributes troops, because we have bilateral relations with them. If a Member State were to send its troops to our country in violation of the Charter, then they are not protected by the Charter. Their protection disappears on account of the illegality.

I come now to the operative paragraphs of the draft resolution. I shall make this very brief. As regards the representative of Sweden, who is the present President of the Security Council, we have already expressed our views. Perhaps we should not say any more, because it might embarrass him. Someone might suggest that the President of the Security

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Council is too well liked by India. It is true that he was the Minister of his country in India, but, at the same time, I believe that he was Minister in Pakistan. I note that he is indicating that he was not, so I may be wrong on that. At any rate, so far as we are concerned, whether one has been to India or not, our Government would never refuse hospitality to anyone who comes from the United Nations, or indeed anyone who is satisfied with the kind of modest hospitality that we can offer. But when it comes to discussion of propositions, we have to look at what he has. However, in the general context of never declining conciliation, in that, India will not be found wanting.

This draft resolution, in our submission, is totally vitiated by its preamble and by its introduction of United Nations forces. I would ask the United Kingdom and the United States to consider that in the way in which they have presented their proposal, they have established what a lawyer would call a *Prima facie* case, that is they have already given them a good certificate—it is a *laissez-passer* for this matter. Of course it could be argued that it deserves consideration by the Government of India. That is a possible explanation. But I have given the answer : we have considered it for many years and we have rejected it. Therefor, so far as that is concerned, that draft resolution will be of no value. Secondly, it will not meet the purposes for which it is required.

Sir Pierson Dixon, with characteristic sincerity, has asked us to believe that his country was a common friend of ours—and I have forgotten the fact that he forgot us in the numbering the other day, and I accept that in the way it is offered. But I would be failing in my duty if I did not convey to the Security Council and to him that the developments of the last few days and the promotion of the Pakistan proposals, either by or with the assistance of the United Kingdom, have not served to soothe the difficult relations that have arisen as a result of many other matters. My Government will not throw the baby out with the bath water. We are a conservative people, even though all of us do not belong to the Conservative Party. We are a people who are attached to the peoples

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of the United Kingdom by many ties. But the basis of all that is mutual respect, and once that disappears other things become difficult.

I would be failing .n my duty and it would be inaccurate to suggest that the reception of this idea on the other side is in the same way. Here is a report of the view of the Prime Miuister of Pakistan. As everyone knows, he has sent his congratulations and his appreciation and gratitude to the representative of the United States. After that he stated—this is a report taken from the newspaper "Dawn", and I do not say that it is an official paper; it was founded by the founder of Pakistan and is considered to be the leading paper—I hope I am not making invidious distinctions in Karachi :

> "The Prime Minister of Pakistan Paid a tribute to the role played by the United Kingdom in the Security Council deliberations, and said that the United Kingdom had lent a great deal of assistance in the Kashmir question, which was again responsible for the support received from the United States."

I am afraid that this is not very flattering to the United States, but I am not reading out my opinions; this is the opinion of the Prime Minister of Pakistan. Of course, it may will be that he is so pleased with the matter that he attributes reasons in other ways. The United Kingdom is entirely free in this matter to take whatever position it wishes as a sovereign nation and as a permanant member of the Security Council. But so much has been made in this debate of our being two peas in a pod, of our common and equal relations, and so on.

I was High Commissioner in London for five years and I had a great deal to do with the relations of the United Kingdom and India. I also had a great deal to do with our military organization, as far as it concerned the United Kingdom, in connexion with supplies and so on. It would take much more than normal circumstances for me to believe that

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there has being any accasion on which we have been the object of any particularly favourable treatment. We never asked for it and we never got it. But we have always been treated kindly, courteously and with respect, and I am sure that this position will continue.

But I would beg of Sir Pierson Dixon not to ask us to convey the view to our people that the attitude of the United Kingdom on this draft resolution is one of impartiality as between Pakistan and India. This does not mean that the United Kingdom is not impartial on the question according to its own lights. As far as we can see it, however, it would not be so regarded by our public opinion.

I express my thanks to the Council for the courteous way in which this difficult problem has been presented. This very bitter pill has been coated with a lot of jam, but nevertheless the pill is very bad. It is not only bitter, it is poisonous—sheer poison so far as peace is concerned.

Concern was expressed in the Security Council by the representative of Cuba for the people of Kashmir. My Prime Minister stated the same thing. The People of Kashmir do not necessarily have to be separated from the people of India for this. It is their future, it is their economic and political stability, their rights of freedom and their hopes of the future. They have waited for a long time to have their difficulties settled and they have taken things into their own hands. Any attempt to interfere in this or not to allow this question to be solved by direct negotiation between our two people in conditions in which Pakistan and India can mutually respect and trust each other, would be wrong. That cannot be done by resolutions of the Security Council or by resolutions of any other organ. That is a matter to which we have to make our contribution; I say with equal respect that Pakistan has to make its contribution in a greater measure to make up for its defaults of the past.

The first element would be to call off the dogs of hatred, the campaign of hatred. Our country will not tolerate threats and we shall not sit down under them. My Prime Minister

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stated yesterday that if it came to that, we would perform our duty under the Charter of the United Nations, that is : defend the soil of our country. We are not cowed down by these threats, nor are we going to fall a victim to them by creating a war atmosphere in our country. We shall reject the attempt to introduce war elements in the way of a United Nations force, following upon the military pacts and other war apparatus on our frontiers, which have extended whold realm of the "cold war" right into the heart of our country.

Will you say, Mr. President. that a responsible Government like ours does not have the primary duty for the security of our country, which in the last 800 years or so has been time after time invaded through the north-western passes, and which for 300 years has lain at the feet of the conqueror ? Are these not the primary duties that we owe to the Council and to ourselves ? Or are we to be intimidated by the press propaganda, calling us an immoral people ? We are the judges of morality. Morality is not a matter of voting. You cannot vote people into morality. If we acted against international morality, that would be on our conscience and the action would show.

India pleads not guilty and denies all charges of any attempt at violation. It begs of the representative of the United Kingdom not to throw aspersions upon our determination to observe these obligations. It begs of the Security Council to take into account that if we have any engagements, those engagements are conditional. They are the foundation upon which the commitment is built. No part I, then no part II; no parts I and II, then no part III—that is how it is. Therefore, those conditions are fundamental.

Therefore, if we have addressed ourselves to this matter at length, it is not because we want to win a resolution or to ask you to accept or reject a resolution. This is a time of great political excitement and activity, when we have this barrage of propaganda from the north-west—thank God, not from the north-east—and all these mis-statements of fact about concentrations of the Indian Army. I ask you : how do we

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concentrate these armies without having to pay for them? We have a parliament, we have a budget—we have to find the money. Where do we get the extra troops? What is more, there are observers on the cease-fire line: if we concentrated troops, they would know it and they would report to the Secretary-General.

Therefore, we cannot proceed in that context. I beg of you not to take a step which will aggravate the situation. There is always room for good men, men of wisdom, to find ways and means. But these are not the ways. It is implied that we are wriggling out of a commitment. Newspapers are led to believe that India is backing out of a commitment that was made, and the world is not told the truth—the simple truth—that must be accepted by every Member of the United Nations. How did Pakistan get into Kashmir? There is only one way that she got in, and that was by invasion. And is there anywhere in the Charter any provision for exercising by the use of arms a right over a territory over which a country has no claim—over which it may establish one in the future, but over it now has no claim?

I submit that after nine years there is a bounden duty lying at the door of the Security Council to look back at the resolution of 17 January 1948 and subsequent resolutions and at the concealment of facts, not only when the Commission went there but subsequently, time after time. The accumulation of arms today and the continuous concealment of the increase in armed strength, in the air and on the ground and everywhere—these are not only violations of the Charter, but they are a threat. And those threats do not come from us. We, as a country, have given evidence of our loyalty to the Charter. With our meagre resources, we have contributed to the safeguarding of peace. In the course of doing that, we have incurred hostility from various sides.

Without introducing any element of controversy. I should like to conclude on this note: my country has deliberately chosen the path of an independent foreign policy. No pressures will elbow us into an alignment in one direction or another. We serve our people and the cause of international peace as enshrined in the Charter of the United Nations.

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